UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Juan Ramon, d.b.a. JUAN CANDELARIA, NYSID#55071843J,

Plaintiff,

-against-

CORPORATE CITY OF NEW YORK ("NYC") NEW YORK CITY POLICE DEPARTMENT ("NYPD"); OFFICE OF THE KINGS COUNTY DISTRICT ATTORNEY ("DA"); N.Y.S. DEPARTMENT OF CORRECTIONAL SERVICES ("DOCS"); NEW YORK CITY CORRECTION OFFICER ARIAS VICTOR, SH. # 9419 ("VICTOR"); NYPD OFFICER JOHN SILVA, SH. #2671 ("SILVA"); NYPD SERGEANT BENARDO BLAIR ("BLAIR"); NYPD DETECTIVE DOMINICK VASATURO, SH. # 01693 ("VASATURO"); MIAMI DADE COUNTY JAIL ("DCJ"); METRO-DADE MIAMI POLICE DEPARTMENT DET. MORRISON ("MORRISON"); NEW YORK STATE DIVISION OF PAROLE ("DOP"); NEW YORK STATE SECRETARY OF STATE ROSSANA ROSADO ("ROSADO"); FLORIDA STATE SECRETARY OF STATE KEN DETZNER ("DETZNER") AND OTHER KNOWN AND UNKNOWNS EMPLOYEES, AGENTS, AGENTS AND PUBLIC SERVANTS OF THE STATE OF FLORIDA AND OF THE STATE OF NEW YORK, individually and in their official capacity,

Defendants

COMPLAINT

No.: 17 CV 1703

Bench Trial DEMAND

## I

## SUBJECT-MATTER JURISDICTION

1. This is a Civil Rights Actions Authorized by the Civil Rights Acts of 1871 et seq, as codified in 42 U.S.C. §§ 1981-1986, pursuant to 28 U.S.C. §§ 1343(3)(3) and 1331 (1948), to t he extent that the former section permits federal district courts to hear cases involving the deprivation of Civil Rights, and the latter section permit federal courts to hear all cases involving a federal question or issues, SUBJECT-MATTER JURISDICTION is proper before this Honorable Article III Court/Panel pursuant to 28 U.S.C. §§ 1331 and

**1343(3) et seq.** and, to the **extent that under Article III, § 2 of the U.S. Constitution Federal Courts have the power to try** " all cases of admiralty and Maritime Jurisdiction, and the U.S. Department of Commerce and U.S. Department of Transportation issue **"License"** for transportation in "commerce" **and, "Commerce," includes virtually everything that natural** man/woman **engages in on any given day, such as inter course and birth, life....** HJR-192, June 6, 1933, Now P.L. 73-10/Fn3; E.O. 6166, June 11, 1933], which is incorporated by reference herein, and Plaintiff is asserted that he was transported, across state-line to the State of New York from Florida on 9/4/1988, thereby affecting **commerce, Subject matter Jurisdiction** is also proper under Article III, Section 2 of the Constitution.

2. **As an Civil Rights Actions asserting** that the underlying Plaintiff arrested in his State of FLorida by agents, agencies and employees of the STATE OF FLORIDA and that, subsquently, Plaintiff was transported to the State of New York by agents, agency and employees of the State of New York **without any valid expectation of ever trying or convicting Plaintiff** under Kings County Indictment #9954/87 **even after a lapse of over** ONE QUARTER OF A CENTURY, **JURISDICTION diversity Jurisdiction is also proper under 28 U.S.C. § 3132 and, as a Civil Rights Action** seeking COMPENSATORY AND PUNITIVE Damages in a reasonable amount exceeding **One Million Dollar** $1,000,000.00) per each of the twenty-nine (29) years Plaintiff has been held against his under the custody/supervision of the **CORPORATED CITY/STATE OF NEW YORK,** Jurisdiction is also proper under 28 U.S.C. § 1332-1333 and, finally, plaintiff involkes 28 U.S.C. §§ 1367 and 1651.

## II
## VENUE

3. **As a Civil Rights Action** asserting that State Officials, acting under color of State Law, has been holding Plaintiff, against his will, in the City/State of New York without a trial and without a conviction **under Kings County Indictment # 9954/87** and without affording the Plaintiff an opportunity to return to his domicile in the State of Florida **even after a lapse of over ONE QUARTER OF A CENTURY IN CAPTIVITY IN THE CITY/STATE OF NEW YORK**, in a manner violative of State and Federal Extradition Laws, **Venue is Proper** in any United States District Court for The Southern or Eastern District of New York, inasmuch as the Defendant Corporated City of New York is deemed an artificial person, authorized to do business under Color of the Law of the STATE OF NEW YORK [U.S. V. Minker-350 U.S. 179, 187 (1956)].

4. This Court has **venue** over this matter pursuant to 28 U.S.C. §§ 1391(a)(3)(b) and (c) and 1404(b) and 1401. Some of the defendants, including the corporated City of New York, conduct business within in Manhattan, which is geographically located within the United States District Court, for the Southern District of New York.

## III
## PARTIES TO THIS ACTION

A: Plaintiff: **Juan Ramon, d.b.a. JUAN CANDELARIA, NYSID#5507184J** is has been held, against his will, in the Supervision/Custody of the City/State of New **York since** 9/4/1988 and, while being held therein, of the City/State of New York, following his extradition from his domicile in the State of Florida, on 9/4/1988 and, while in the custody or supervision of the City/State of New York, Plaintiff was denied proper and timely medical care attention; consequently, Plaintiff was allowed to develop End-Stage Renal Disease ("ESRD") and, since 1997, has wholly been dependent upon either kidney transplant or dialysis for surivival.

B: Defendandants:

**a: Corporate** CITY OF NEW YORK ("NYC" or "CITY OF NEW YORK") is being sued individually and in its capacity as an corporation authorized to do business in the State of New York under Color of New York State Law enacted/passed by the New York State Senate and Assembly and, in said capacity, Defendant CITY OF NEW YORK has deliberately failed to properly supervise and train its agents and agencies, thereby resulting in plaintiff being held in the City/State of New York without a trial and without conviction following Plaintiff's conditional waive of Extradition to the City/State of New York on 9/4/1988, and the Defendant City of New York never intend to live up to the promises its had made on 9/1/1988 to induce Plaintiff to waive extradition under Kings Co. Indictment # 9954/87 **in violation of Applicable State and Federal extradition Laws**, for which a cause of action is hereby created for redress under the Civil Rights Acts of 1871 et se.

**i. New York City Police Department** ("NYPD") is being sued individually and in its capacity as an agency of the CITY OF NEW YORK and, in said capacities, Defendants NYPD has deliberately failed to train and supervise its police force, causing **PREJUDICE to Plaintiff**

ii. The Defendant OFFICE OF THE KINGS COUNTY DISTRICT ATTORNEY (hereinafter referred to as "Kings Co. D.A." or "Kings Co. D.A.") is being sued individually and in official capacity as Acting Final Decisionmaker for the County of Kings within the purview, true intent and meanings of PEMBAUR V. CITY OF CINCINATI, 475 U.S. 489, at 484-485 (1986)("Pembaur") and, in said capacities, Defendant Office of the Kings Co. D.A. has authorized the arrest in and extradition of Plaintiff from his State of Florida under the erroneous theory that a test-fired bullet from the .38 two inch barrel Serial # 288659LW Cal. Revolver imputed to Plaintiff as a "GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. # 9419" and Vouchered by Defendant NYPD officer John Silva, SH. # 2671 under NYPD Property Clerk's Invoice # D12747 ("Voucher D12747") ballistically matched a bullet recovered or removed from the body of the underlying victim [see e.g. P. 20, ¶16, Post] without any valid expectation of ever obtaining a conviction and knowing the contrary to be so [ see e.g. Pg. 34, ¶¶40-41, Post], in RECKLESS or callous disregard of State and Federal Extradition Laws and of the rights, privileges and immunities guaranteed by the constitution and laws of the United States, Defendant Office of the Kings County D.A. commenced and continued Prosecution against Plaintiff without any valid expectation of ever obtaining a conviction under Kings co. Indictment #9954/87; without intention of complying with Federal and State Extradition Law, defendant Office of the Kings Co. D.A. has failed to live up to promises made to induce Plaintiff's waiver of extradition in violation of Extradition Law acting under color of State Law.

iii. Defendant N.Y.S. Department of Correctional Services ("DOCS") is being sued individually and as an agency of the State of N.Y.

**b. Defendant Correction Officer Arias Victor, Sh. #9419** ("Victor") is being sued individually and in his capacity as employee of the New York City Department of Correction ("NYCDOC") and as a complaining witness acting in concert with city and state officials under color of New York State Law and, in said capacities, Defendant Victor has conspired with other known and known employees of the City and of the State of New York to lodge baseless criminal accusations against plaintiff without any valid expectation of ever obtaining a conviction under Kings County Indictment # 9954/87 and deliberately induced the Defendant Office of the Kings co. D.A. to commenced and continued the criminal prosecution of Plaintiff without any valid expectation of ever obtaining a conviction even after a lapse of over a quarter of a CENTURY, **thereby inflicting permanent harms to plaintiff**, in violation of Plaintiff's rights, privileges and immunities guaranteed by the Constitution and Laws of the United States, for which a cause for redress under the Civil Rights Act of 1871 is hereby created.

c. Defendant John Silva, Sh. # 2671 ("Silva") is being sued individually and in officials capacity as employed of the NYPD and, in said capacities and acting in concert with other known and unknown state and municipal officials acting under color of State of Law, Defendant Silva has conspired to accuse plaintiff of fabricated weapon possession accusation, thereby inducing the prosecution of plaintiff without any valid expectation of ever obtaining a conviction under Kings Co. Indictment #9954/87, without delving fully into the circumstances attendant to Defendant Victor's motive for **fabrication of accusations against plaintiff, in violations of the I-XIV Amends.**

d. **Defendant Benardo Blair ("Blair")** is being sued individually and in its official capacity as Desk Sergeant employed by the Defendant NYPD and posted in the Nine 0 (90th) Precinct in the evening of 11/9/87, under the theory that, as an Office of Justice, he was bound to known the identity of the . 38 Cal. Revolver he allegedly received from Defendant Correction Officer Arias Victor, SH. #9419 but recklessly disregarded the risk that **"IT IS NO VIOLATION OF THE PENAL LAW OR THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK MERELY TO POSSESS AN INOPERABLE FIREM** [On 11/9/87] [PEOPLE V. LYNCH and PEOPLE V. GROSS] but did act in BAD-FAITH and in violation of Plaintiff's constitutionally protected rights, privileges and immunities in UNDULLY PRESSURING OR DECEIVING **the Defendant Office of the Kings County District Attorney to indict Plaintiff** without any valid probable cause and without any valid expectation of ever obtaining a conviction under Kings County Indictment #9954/87, for which a cause of action is hereby created for redress under the Civil Rights Acts of 1871 et seq.

e. **Defendant Dominick Vasaturo, Sh. #01693 ("Vasaturo")** is being sued individually and in his official capacity as employee of the Defendant New York City Police Department ("NYPD") and, in said **Capacities, Defendant Vasaturo, who had an obligation to independently investigate the actual identity of the .38 Cal. Revolver** Defendant NYPD Officer John Silva, SH. #2671 had Vouchered on 11/9/87 under NYPD **Voucher D12747, within the purview, true intent and meanings of ¶¶16-23, at Pgs. 19-22, infra],** unduly pressured or deceived the Defendant Office of the Kings County District Attorney by making material misrepresentation that **"THE BULLET RECOVERED FROM THE VICTIM'S BODY CAME FROM DEFENDANT'S .38 CALIBER REVOLVER" [id.] in violation of State/Federal Extradition/Commerce Laws.**

f. **Defendant Dade County Jail ("DCJ")** is located at 1321 N.W. 13th Street, Miami, Florida 33125, and it is being sued individually and in it capacity as a Detention Center with capacity to house 1712 adult pre-trial detained and, in said capacity, Defendant DCJ withheld plaintiff without bail between May 26 and September 4, 1988 and, notwithstanding applicable Florida Law which proscribed that any officer who shall deliver to the **agent** for extradition of the Demanding State a person in his her custody under the governor's warrant, in **willful disobedience to § 941.10, shall be guilty of a misdemeanor of the Second Degree,** punishable as provided in §§ 775.082a or 775.038, Defendant DCJ and its employees also delivered Plaintiff to the **agents (NYPD Detectives Dominick Vasaturo and Kevin McKeon) of the State of New York** in willful violation of Federal and State Extradition Laws and without any valid expectation of ever obtaining a conviction, Plaintiff has been held in the Custody of the State of New York for over quarter of a Century, under Kings County Indictment # 9954/87 even long after the status of limitation for trying, convicting or acquitting plaintiff has lapsed and plaintiff has not been given an opportunity to return to the State, Florida, from which he was extradited in the evening of September 4, 1988, all in violation of State and Federal Extradition Laws.

g. **Defendant Metro Dade Miami Police Det. Morrison ("Morrison")** is being sued individually and in her capacity as an employee of the Metro Dade Miami Police Department ("MMPD") under the theory that she has acted in league with other known and unknown employees of the NYPD and of the MDMP bent to violate plaintiff's Federal and State Extradition rights, privileges and immunities guaranteed by the Const.

**h. Defendant N.Y.S. Division of Parole ("DOP")** is being sued as an ESSENTIAL PARTY because, instead of returning Plaintiff to his domicile to the STATE OF FLORIDA in compliance with **and as mandated by, the underlying Terms and Conditions [Exhibit A] for Waiver of Extradition**, the Defendants City/State of New York , in violation of State and Federal Extradition Laws, placed Plaintiff, on 8/6/2015, under the Supervision of the DOP pursuant to N.Y. Penal Law § 70.40, which was not even in effect when Plaintiff conditionally waived extradition to the State of New York under the terms and condition set forth in Exhibit A, currently provides that, if paroled, a prisoner-turned-parolee is released to the custody of the DOP to serve the remainder of his sentence "**in accordance with and subject to the provisions of the executive law" [id. NY McKinney's Penal Law § 70.40(1)(a)] upon expiration of his MINIMUM SENTENCE [id. § 70.40 (1)(a)(i)], contrast with EXHIBIT A** and, therefore, the Defendant NYS DOP is an essential party.

i. NEW YORK STATE SECRETARY OF STATE ROSSANA ROSADO ("ROSADO") is being sued individually and in her capacity as Secretary of State in charge of enforcing **EXTRADITION LAWS and, to the extent that the Defendants City/State of New York had failed to live up to the promises their had made in order to induce plaintiff to waive extradition, the Secretary of State of New York is an essential party as well [see** Uniform Extradition **Act of 1936] and so is** FLORIDA STATE SECRETARY OF STATE KEN DETZNER **as Plaintiff** is domiciled in The State of Florida.

## FACTS

A: THE SPECIFIC WRONG COMPLAINING OF AND THE GRAVAMENS OF THE FIRST CAUSE OF ACTION UNDER 42 U.S.C. §§ 1981, 1983, 1985 AND 1986

5. Applicable Florida Extradition Law provided, in relevant parts, that:

> Any person arrested in this state charged with having committed any crime in another state ... may waives the issuance and service of warrant provided for in Section 941.07 and 941.08, and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a **writing which state that the person** consents to return to the demanding state...,"

[reprinted from Florida's Uniform Interstate Extradition, Part I, § 941.26(1)(emphasis added)] and, "[i]f and when such consent has been duly executed, it shall forthwith be forwarded to the office of the governor of this state and **filed therein**" [id., at § 941.26(2)(emphasis and underlines added)].

6. A New York State Supreme Court, County of Queens, Criminal Part J-2 Generated Documents, duly executed on December 16, 1988, documented that the Defendants named herein, with the knowledge of those acting in concert with them, were fully aware of Plaintiff's arrest in and extradition from his State of Florida to the State of New York in 1988:

> THE CLERK: Page 2, number 10, Indictment 1457 of 1987, matter of Juan Candelario. You are Juan Candelario?
> MR. CANDELARIO: Yes.
> THE CLERK: Ms. Gray is your attorney?
> MR. CANDELARIO: Yes.
> MS. GRAY: Gail Gray, from the Office of Robert Baum.
> MR. JACKSON: STEVEN Jackson, for the Peopple.
> THE COURT: OK. With respect to Candelario, this is on for a sentence. Counsel, I have the updated report. Have you seem the last report?
> MS. GRAY: I have, your Honor.
> THE COURT: We have put this matter over a number of times, Ms. Gray, because there was a **questions** when we first spoke to Mr.

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Candelario on how he was returned to to the jurisdiction of New York, no necessarily my part. He came here via another hold in another part in Brooklyn.

MS. GRAY: That is correct.

THE COURT: Nowithstanding that, we checked on the aspect of how Brooklyn got him. My understanding, Ms. Gray, is the fact that he was in Florida. OK, but, however, he was also out on the street in Florida, and then he was locked up again , for which Brooklyn then extradited him, and, via Brooklyn extradition of the Defendant, my bench warrant felt on him, and he was then produced in my part.

It wasn't as if he left this court and never hit the streets and went to Florida on a hold and never got out of any detention before Brooklyn retained him on their retainer to be produced in Brooklyn.

So that's my information on where we are.

MS. GRAY: That is also my information. However, Mr. Candelario maintains, upon his release from this courthouse and the dollar bail which was originally set on the Kings County Case [#9954/87 voted on 1/11/88], two officers whom he was unable at this time to identify, escorted him to FLORIDA [ON FEB-12-88].

THE COURT: I appreciate all of that. We know he went to Florida. My understanding, also, is he was released on that hold in FLorida and was on the streets and then got arrested.

Ms. GRAY: Yes.

THE COURT: And when he was arrested, somehow Brooklyn learned of that circumstances, and then Brooklyn extradited him for the Brooklyn matter, and after they extradited him and he returned to Brooklyn, my warrant lodged on the Defendant and he was returned to me.

MS. GRAY: That's correct,"

[re-printed from Pgs. 2-4 of an 8-pages Sentencing Minutes generated by Kenneth McClure, Senior Court Report, on December 16, 1988, under Queens County Supreme Court, Criminal Term Part J-2, before the Honorable Justice JOSEPH G. GOLIA, presiding over Kings Co. Indictment # 1457/87, copy of which is affixed herewith as Exhibit D (emphasis, underlines, materials in bracket marks added)]["hereinafter referred to as "THE COURT GENERATED EVIDENCE OF ARREST IN AND EXTRADTION FROM FLORIDA"].

a. Applicable Terms and Conditions For Waiver of Extradition

7. Plaintiff was arrested in his State of Florida on May 26, 1988 and was held in the Custody of the Defendant Dade County Jail, which was located on 1321 NW 13th Street, Miami, Florida 33125, until he was extradited to the State of New York on **9/4/1988, pursuant to** the Terms and Conditions of a 22-pages Documents entitled:

> Waiver of Extradition to the State of New York of Juan Candelaria, NYSID# 5007884J (FBI RECORD #277674EA1) Upon the Express Terms and Conditions that he (Mr. Candelaria) would be taken from and returned to this State of Florida (at the Expense of the Demanding State of New York), to be so returned under the Uniform Criminal Extradition Act of 1936-The Interstate Agreement on Detainers-and-contract, Guarantee-and-Compact Clauses of the Constitutions of the United State as Hereby (articles 6-9) Conferred, Stipulated and Agreed as of 9/1/1988,"

[re-printed from the Caption Pages of the Underlying 22-Pages Terms and Conditions for Waiver of Extradition (emphasis added and All-caps formats omitted)][hereinafter referred to as "**The Underlying Terms and Conditions For Waiver of Extradition**," copy of which is affixed herewith as Exhibit A-11 through A-    ].

8. "Article 6," items (a)-(c) of the underlying Terms and Conditions for Waiver of Extradition provides that, **"under this Agreement,"**

> (a) upon a conviction on charge involving the displaying of a Deadly Weapon or Firearm, if one should be had, in violation of the Law of the Demanding State of New York, the prison terms must not exceed Ten (10) Calendar Years; (b) upon a conviction on charging involving the Discharging of a Deadly Weapon or Firearm, if one should be had, in violation of the Law of the Demanding State of New York, the prison term must not exceed Twenty (20) Calendar Years and (c) upon conviction on charges involving the **Discharging of a Deadly Weapon or Firearm resulting in the death of another human being** the underlying victim Pedro -

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> Rodriguez, in violation of the Law of the Demanding State of New York, the **prisoner must be released and returned to this state of Florida upon serving the** MINIMUM PERIOD OF IMPRISONMENT ('MPI') legally imposed under the Law of the Demanding State of New York or upon **expiration of Twenty-five (25) Calendar** Years within the meanings of Lee v. STATE, 294 So. 2d 305 (Fla. 1974) in compliance with section 5 of the Criminal Extradition Act of 1936 and with the Contract Clause of the Constitution of the United States,"

[re-printed from Article 6, Pages 1-16 and, incorporated by references herein are also **Articles 7-8, pages 16-19 of the Underlying terms and** Conditions For Waiver of Extradition].

9. Article 10, Item (b)(1) of the underlying Terms and Conditions for Waiver of Extradition additionally provides that:

> (b) the Demanding State of New York does not hereby acquire the Power to punish Mr. Candelaria, within the meanings of the preceded ARTICLES **6 through 9**, until after it has secured a formal Adjudication of the guilt in accordance with **Due Process of Law** and (1) where the Demanding State seeks to impose Punishment without such an adjudication, the Applications Laws and Constitution of the United States **Come Into Play**,"

[re-printed from **Article 10, items** (b)(1) of the Underlying Terms and Conditions for Waiver of Extradition (emphasis added)].

b. The Brooklyn Matter Under Which Plaintiff Was Extradited

10. NYPD **UF-61 Complaint** # 12, 280, which was executed by Defendant NYPD Sgt. Benardo Blair ("Blair") on 11/9/87, identifies **Defendant** Victor Arias **(as the Alleged Victim")** and Victor Arias's brother, named CESAR ARIAS, **(as the eyewitness)** of the **GUN THREATS** (menacing and Criminal Possession of a weapon charge) described therein and made **cross-reference** to NYPD "VOUCHERS 12746/7/8" [see Exhibit B"].

11. NYPD Property Clerk's Invoice # D12747 imputed ownership possession to Plaintiff of one Specific Serial # 288659LW Colt .38 Two Inch Barrel Caliber Revolver which was documented as a "GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. # 9419" on 11/9/87, along with Four (4) live rounds, and a second gun was neither mentioned nor imputed to plaintff Candelaria [see e. **Exhibit** B through B ]["hereinafter referred to as "THE GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. #9419].

12. Based on imputed ownership possession of the GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH.# 9419, Defendants Benardo Blair ("Blair") and Defendant John Silva ("Silva"), pursuant to the instruction of the Office of the Kings Co. D.A. and with the knowledge of the NYPD, charged Plaintiff with one count of (a) Criminal Possession of a Weapon in the Second Degree ("CPW-2nd"), a Class-C Felony under N.Y.S. Penal Law § 265.03, and (b) one **count of** Menacing, a misdemeanor, predicated on Defendant Victor Aria's representation to the Defendants Benardo Blair and Silva that Plaintiff possessed and aimed the underlying GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. # 9419" **at** Correction Officer Arias Victor himself during an argument over exchange for a dollar which defendant Victor Arias represented had taken place in a Texaco Gas Station in the evening of 11/9/87. [2]

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[2] The alleged "GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. #9419" did not match the fingerprints/palmprint of Plaintiff nor was there DNA linking Plaintiff to said gun ever introduced.

**13.** When the underlying "GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. # 9419" turned out to be INOPERABLE, the menacing charge was dimissed and the **CPW-2nd** was reduce to Criminal Possession of a Weapon in the Third Degree ("CPW-3rd"), a Class D-Felony under N.Y.S. Penal Law § 265.02[4](1987) as documented/recorded under Kings County True Bill# 995487, filed on or about **1/11/88:**

> THE GRAND JURY OF THE COUNTY OF KINGS BY THIS [**9954/87**] INDICTMENT ACCUSE THE THE DEFENDANT OF THE CRIME OF CRIMINAL POSSESSION OF A WEAPON IN THE THIRD DEGREE COMMIT- AS FOLLOWS:
>
> THE DEFENDANT, ON OR ABOUT NOVEMBER 9, 1987, IN THE COUNTY OF KINGS, KNOWINGLY AND UNLAWFULLY POSSESSED A LOADED FIREARM, NAMELY, A **REVOLVER**, SUCH POSSESSION NOT BEING IN THE DEFENDANT'S HOME OR PLACE OF BUSINESS.
>
> THE SUBJECT MATTER OF THIS COUNT BEING AN ARMED FELONY AS THIS TERM IS DEFINED IN SECTION 1.20 OF CRIMINAL PROCEDURE LAW,"

[re-printed from Kings Co. Original Indictment # **9954/87**, copy of which is affixed herewith (underlines added and All-caps formats in original)][hereinafter collectively referred to as "**The Brooklyn Matter**"]. **The** NYPD Officers involved in the **Brooklyn Matters** were (a) Officer John Silva, SH. # 2671; (b) Officer Ann Marie Hardy, Sh. # 31587, **and (b) NYPD Sgt. Benardo Blair ("Blair")** who had, allegedly, acquired the "GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. # 9419" from Victor Arias himself. [2]

**14.** Under then existing New York Law, once the Original Indictment # 9954/87 were replaced or superseded by a Second Indictment, the Original Indictment # **9954/87** is **Deemed DIMISSED/ABANDONED.**

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[2] Defendant NYPD Sgt. Benardo Blair never testified and, consequently, Plaintiff has never been given an opportunity to CONFRONT the OFFICER who RECEIVED THE GUN **FROM VICTOR ARIAS.**

**i. Defendant Dominick Vasaturo's Representations That a Test-fired Bullet from The .38 Cal. Revolver Imputed To Plaintiff Under NYPD Voucher D12747 Positively Matched A Bullet Removed from The Body Of Pedro Rodriguez, Per Se, Brings The Defendants Within The Principle of Common Law Fraud**

15. **According to** SYNOPSIS OF FACTS, which had been generated and suppressed by the Office of the Kings Co. D.A. under Case Number "**D.A. HOM.#9424**"), **which** was also carried by the Defendant NYPD under "HOMICIDE #40, in the early morning of November 9, 1987, the underlying victim, later identified as PEDRO RODRIGUEZ," "**Chimbo,**" was found "face down with one bullet hole in chest and one bullet hole left side of the body," laying lifeless in a public street corner at Brooklyn, New York, and the perpetrator was/were never apprehended [See e.g. **Exhibit C** ]. According to statements taken from one **LUIS HERNANDEZ** on 4/22/1988, the underlying victim shot/killed **by** a hand "**holding a silver gun**. More specifically, Defendant Vasaturo, pursuant to the instruction of the Defendant NYPD and with the knowledge of the Defendant Office of the Kings Co. D.A., **documented on or about 5/9/88,** in his own words and phrases, that the underlying:

> ***WITNESS could not see into the windows of the car because they were **tinted.** Witness did see an arm **holding a silver gun** extended from the driver's side of the Audi. The arm was clothed in **white** and had gold jewlry,"

[re-printed from **Synopsis of Facts,** generated by the Defendant Office of the Kings co. D.A. on 4/26 and amended on 45/9/1988 (emphasis, underlines added)] [see **Exhibit C** ].

16. ON JUNE 24, 1988, **DEFENDANT DET. DOMINIC VASATURO**, SH. #01693 INFORMED THE OFFICE OF THE KINGS CO. D.A. THAT THE HOMICIDE OF PEDRO RODRIGUEZ WAS COMMITTED WITH THE .38 CAL. REVOLVER IMPUTED TO PLAINTIFF AS A "GUN RECOVERED BY CORRECTION OFFICER ARIS VICTOR, SH. # 9419" ON 11/9/87 UNDER NYPD INVOICE #D12747 [see Exhibit C]:

> **FACTS:**
> DEFENDANT AND VICTIM GOT INTO AN ARGUMENT IN AN AFTER HOURS CLUB. DEFENDANT LEFT THE CLUB AFTER THE ARGUMENT. WHEN VICTIM LEFT THE CLUB AND WAS GETTING INTO HIS CAR, DEFENDANT SHOT THE VICTIM TWO TIMES.
> **PROPERTY VOUCHERED: .38 CALIBER REVOLVER:**
> **VOUCHER #D12747, 90TH PCT., BY P.O. JOHN SILVER, SHIELD #2671, 61 #12280. (ON 11/9/87, AT 7:35 P.M. THE DEFENDANT WAS OBSERVED IN POSSESSION OF THIS GUN.** THE GUN WAS TAKEN WAY FROM THE DEFENDANT BY AN **OFF-DUTY CORRECTION OFFICER.**
> **NOTE:**
> **I AM INFORMED BY DET. VASATURO THAT A BALLISTICS LAB ANALYSIS WAS DONE BY DEET. ALBANESE OF THE BALLISTICS SQUAD. THE RESULT OF ANALYSIS:** THE BULLET RECOVERED FROM THE VICTIM'S BODY **CAME FROM THE DEFENDANT'S .38 CALIBER REVOLVER.**
> ACTION TAKEN:
> DRAFTED **COMPLAINT. COMPLAINT AND WARRANT AUTHORIZED BY JON BESUNDER,"**

[RE-PRINTED FROM **DE7, AT PG. 52 OF 80 ENTERED ON FLSD DOCKET: 09/25/14 "HOMICIDE BUREAU** INFORMATION **SHEET" DATED "6/24/1988"** OR "SYNOPSIS OF NYPD DET. VASATURO (**EMPHASIS**, UNDERLINES AND ALL-CAPS FORMATS ADDED)].

17. ON JULY 11, 1988, THE **DEFENDANT** OFFICE OF THE KINGS CO. D.A. MADE THE FOLLOWING ENTRIES, UNDER "HOMICIDE BUREAU INFORMATION SHEET," UNDER D.A. HOM. #9424:

> GRAND JURY PRESENTATION:
> A GRAND JURY PRESENTATION IS SCHEDULED FOR TUESDAY, JULY 12, 1988, AT 10 A.M.
> NOTIFICATIONS HAVE BEEN ENTERED FOR DET. **VASATURO** AND **P.O. BARKER OF THE 83RD PRECINCT.**
> THE DEFENDANT, **JUAN CANDELARIO**, IS PRESENTLY IN THE CUSTODY OF **FLORIDA STATE AUTHORITIES** WHERE HE IS BEING HELD ON A **GUN POSSESSION CHARGE.**
> INVESTIGATION CONTINUING,"

[RE-PRINTED FROM "HOMICIDE BUREAU INFORMATION SHEET DATED 7/11/1988, COPY of which is affixed herewith as Exhibit C (emphasis, underlines and All-caps formats added)(cf. Pembaur, supra, 475 U.S. 469 (3/25/1986))].

18. ACCORDING TO "SYNOPSIS OF FACT" DULY EXECUTED BY THE DEFENDANT OFFICE OF THE KINGS CO. D.A. ON 11/16/1987, THE UNDERLYINNG VICTIM (PEDRO RODRIGUEZ, A/K/A, CHIMBO") OR THE UNDERLYING:

> **DECEASED [WAS] FOUND FACE DOWN WITH ONE BULLET HOLE IN THE CHEST AND ONE BULLET WHOLE LEFT SIDE OF BODY.**
> ACTION TAKEN:
> **NOTIFICATION TAKEN.**
> **INVESTIGATION CONTINUING,"**

[RE-PRINTED FROM EXHIBIT C ("D.A. HOM. #9424")(EMPHASIS, UNDERLINES AND ALL-CAPS FORMATS ADDED)].

19. **THE** D.A. HOM. #9424 WAS ALSO CARRIED BY THE NYPD AS "**HOMICIDE #40**" **or** "**NYPD HOM. #40**")], NYPD DD'5 CONSISTING OF FOLLOW-UPS **#1 THROUGH #38** AND, IN **DD'5 FOLLOW-UP # 37**, DEFENDANT NYPD DET. VASATURO, SH. # 01693 DOCUMENTED THE STEPS HE FOLLOWED-UP FOLLOWING THE DEFENDANT OFFICE OF THE KINGS CO. D.A.'S DIRECTION OF **6/24/88 DIRECTING HIM TO** [SEE ¶___, **ANTE**] **DRAFT CRIMINAL COMPLAINT AND WARRANT ISSUED BY JON BESUNDER:**

> **1. ON THURSDAY, JUNE 30, 1988,** "THE UNDERSIGNED [DET. VASATURO] PERSONALLY WENT TO 49 CHAMBERS AT (WARRANT DIVISION) TO FILE AN ARREST WARRANT ON **JUAN CANDELARIA WANTED FOR THE HOMICIDE OF PEDRO RODRIGUEZ ON 11/9/87.** THE UNDERSIGNED SPOKE TO SGT. ZULBERTI WHO INFORMED ME THAT THIS WARRANT IS FILED UNDER WARRANT **#E88200021**. A TELETYPE MESSAGE WAS SENT TO **DET. MORRIZON, METRO DADE MIAMI P.D.** INFORMING HER OF THIS WARRANT.
> 2. PENDING FURTHER INVESTIGATION, **CASE ACTIVE,"**

[RE-PRINTED FROM **NYPD DD'5, FOLLOW-UP #37**, COPY OF WHICH IS AFFIXED HEREWITH AS **EXHIBIT C** (EMPHASIS, UNDERLINES AND ALL-CAPS FORMATS ADDED)].

20. ON MAY 26, 1988, PLAINTIFF WAS ARRESTED BY THE METRO-DADE MIAMI POLICE ("MDMP") PURSUANT TO THE INSTRUCTION OF DEFENDANT DET. MORRISON AND SGT. DURGAN **AND WITH THE KNOWLEDGE OF DEFENDANTS GOVERNOR OF THE STATE OF FLORIDA AND OF DEFENDANT NYPD AND NYPD DET. VASATURO.**

21. **PURSUANT TO THE UNDERLYING** [DE7] TERMS AND CONDITIONS FOR WAIVER OF EXTRADITION, TWO MALES WHITE, WHO IDENTIFIED THEMSELVES TO PLAINTIFF AS NYPD DOMINICK VASATURO, SH. # **01693 AND NYPD DET. MCKEON,** REMOVED PLAINTIFF FROM THE MIAMI DADE COUNTY JAIL IN THE EARLY MORNING OF 9/4/1988 AND TRANSPORTED PLAINTIFF TO THE DEMANDING STATE OF NEW YORK. UPON ARRIVING TO THE CITY OF NEW YORK, PLAINTIFF WAS TAKEN TO CENTRAL BOOKING AND WAS THEN PLACED IN THE BROOKLYN HOUSE OF DETENTION FOR MEN ("BHDM") **UPON COMPLETION OF CENTRAL BOOKING PROCESSING ON 9/5/1988.**

22. **ACCORDING TO INFORMATION ENTERED BY DEFENDANT NYPD DET. DOMINICK VASATURO, SH. # 01693 UNDER DD'5 FOLLOW UP #** 38 OF 38, GENERATED UNDER NYPD HOM. #40, **THE PRESENCE OF PLAINTIFF ON 9/4/1988 IN THE DEMANDING STATE OF NEW YORK WAS ALSO RECORDED ON DEFENDANT** VASATURO'S OWN WORDS AND PHRASES:

> **CONTENTS: ARREST FOR HOMICIDE #40**[:]
> 1. **ON SUNDAY, SEPTEMBER 4, 1988,** THE UNDERSIGNED IN COMPANY OF DET. MCKEON 83 SQUAD ARRESTED THE BOVE AT 120 SCHERMERHORN'S ST AT 130 HOURS. THE DEFENDANT WAS **CHARGED AT THAT TIME FOR THE MURDER OF PEDRO RODRIGUEZ.**
> 2. IN VIEW OF THE ABOVE AND **AFTER CONFERRING WITH THE BELOW SUPERVISOR RECOMMENDED CASE CLOSED,"**

[**RE PRINTED FROM DD'5, FOLLOW-#38 OF 38 GENERATED UNDER NYPD HOM. #40,** COPY OF WHICH IS AFFIXED HEREWITH AS EXHIBIT C (EMPHASIS, UNDERLINES AND AL-CAPS FORMATS ADDED)].

23. **IN SUMMARY, THE "MURDER OF PEDRO RODRIGUEZ" CHARGE** IMPUTED TO PLAINTIFF, AS HERETOFORE RECITED, STEMMED FROM DET. DOMINICK VASATURO'S REPRESENTATION TO THE OFFICE OF THE DEFENDANT KINGS CO. D.A. THAT A TEST-FIRED BULLET FROM THE SERIAL # 288659LW COLT .38 CAL. "GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. # 9419" BALLISTICALLY MATCHED A BULLET REMOVED FROM THE BODY OF PEDRO RODRIGUEZ ON 11/10/1988.

24. N.Y.S. Common Law, upon defining "VOID PROCESS" as such as the Court has no power to award ****, acknowledges that: (a):

> IN THE CASE OF VOID PROCESS THE LIABILITY ATTACHES WHEN THE WRONG IS COMMITTED, AND NO PRELIMINARY PROCEEDING IS NECESSARY TO VACATE OR SET IT ASIDE AS CONDITION TO MAINTAIN AN AN ACTION,"

[accords, FISCHER V. LANGBEIN, 103 N.Y. 84, at 90, 8 N.E. 251 (N.Y. Ct. App. 10/5/1886)(emphasis, underlines and All-caps formats added)] and:

> ALTHOUGH THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION ONLY APPLIES TO THE UNITED STATES COURTS, WE MUST ASSUME THAT THE WORD INDICTMENT IN THE FEDERAL CONSTITUTION HAS THE SAME MEANING AS THE SAME WORDS IN THE STATE CONSTITUTION,"

[accords, People v. Boagdanoff, 254 N.Y. 16, at 34, 171 N.E. 890 (N.Y. Ct. App. 1930")("Boagdanoff")(emphasis, underlines and All-caps formats added)] and, in regarding thereof, [i]

> THE LANGUAGE OF THE FIFTH AMENDMENT OF THE FEDERAL CONSTITUTION IS THE SAME AS THE WORDS IN ARTICLE I, § 6, OF THE NEW YORK CONSTITUTION: 'NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL OR OTHERWISE INFAMOUS CRIME *** UNLESS ON PRESENTMENT OR INDICTMENT OF A GRAND JURY,"

[accords, People ex. rel. Battista v. Christian, 249 N.Y. 314, at 317-320 (N.Y. Ct. app. 1928)(emphasis, underlines and All-caps formats added)] and [ii]:

> SECTION 12 OF ARTICLE I OF THE NEW YORK STATE CONSTITUTION CONFORMS WITH THE FOURTH AMEND REGARDING THE PROSCRIPTION AGAINST UNREASONABLE SEARCHES AND SEIZURES, AND THIS IDENTITY OF LANGUAGE SUPPORT A POLICY OF UNIFORMITY IN BOTH STATTE AND FEDERAL COURTS,"

[accords, PEOPLE V. PONDER, 54 N.Y.2d 160, at 165, 429 N.E.2d 735, 445 N.Y.S.2d 57 and People v. Bigelow, 66 N.Y.2d 417, at 422-423 (emphasis, underlines and All-caps formats added)].

> AFTER THE FACT JUDICIAL PARTICIPATION CANNOT VALIDATE AN UNLAWFUL ARREST [AND] ONLY PROBABLE CAUSE EXISTING AT THE TIME OF ARREST WILL VALIDATE THE ARREST AND RELIEVE THE DEFENDANT OF LIABILITY,"

[accords, BROUGHTON V. STATE OF NEW YORK, 37 N.Y.2d 451, at 454 (N.Y. 1975)].

25. ACCORDING TO INFORMATION GENERATED BY THE DEFENDANT NYC DEPARTMENT OF PROBATION PURSUANT TO THE INSTRUCTION OF THE DEFENDANT OFFICE OF THE KINGS CO. D.A., KINGS CO. INDICTMENT #8897/88, **VOTED ON** 9/27/1988 IN PLAINTIFF'S ABSENCE FOLLOWING PLAINTIFF'S EXTRADITION TO THE STATE OF NEW YORK ON **9/4/1988**, SUPERSEDED THE ORIGINAL INDICTMENT #**9954/87**:

> THE DEFENDANT HAD BEEN ARRESTED ON **11/9/87** FOR CRIMINAL **POSSESSION OF A WEAPON 2°**, CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE, RESISTING ARREST, AND **MENACING** UNDER INDICTMENT NUMBER **9954/87** BEFORE BROOKLYN CRIMINAL COURT HOWEVER THIS INDICTMENT IS SUPERSEDED BY THE PRESENT INDICTMENT, **8897/88**. THE DEFENDANT HAS NO SUBSEQUENT ADULT ARRESTS AND HAS NO KNOWN JUVENILE COURT RECORD,[2]"

[RE PRINTED FROM **DE7, AT PG. 62 OF 80 ENTERED** "**ANALYSIS OF OFFENSE AND LEGAL HISTORY**" ENTERED ON FLSD DOCKET: 09/25/2014 (EMPHASIS, UNDERLINES AND ALL-CAPS FORMATS ADDED)]. ["**PSR CASE #KS89-0241**"].

26. **NEW YORK MCKINNEY'S CPL** § 200.80 PROVIDED IN 1988 THAT, UPON ISSUANCE OF A **SUPERSEDED INDICTMENT**, THE ORIGINAL INDICTMENT IS DEEMED DISMISSED UNDER THE FOLLOWING CIRCUMSTANCES:

> IF ANY TIME BEFORE ENTRY OF A PLEA OF GUILTY TO AN INDICTMENT OR COMMENCEMENT OF A TRIAL THEREOF **ANOTHER INDICTMENT IS FILED IN** THE SAME COURT CHARGING THE DEFENDANT WITH AN OFFENSE CHARGED IN **THE FIRST INDICTMENT**, THE FIRST INDICTMENT IS, WITH RESPECT TO SUCH OFFENSE, SUPERSEDED BY **THE SECOND INDICTMENT** AND, UPON THE DEFENDANT'S ARRAIGNMENT UPON THE **SECOND INDICTMENT, THE** COUNT OF THE **FIRST INDICTMENT CHARGING** SUCH OFFENSE MUST BE DISMISSED BY THE COURT. THE **FIRST INDICTMENT** NOT HOWEVER, SUPERSEDED WITH RESPECT TO ANY COUNT CONTAINED THEREIN WHICH CHARGE ONE OR MORE OFFENSE **NOT CHARGE IN THE SECOND INDICTMENT**,"

[**ACCORDS, CPL** § **200.80** (EMPHASIS, UNDERLINES AND ALL-CAPS FORMATS ADDED)].

27. DURING THE 4/3/89 THROUGH 4/11/89 STATE JURY TRIAL UNDER SUPERSEDED INDICTMENT **#8897/88** THE STATE JURY WAS TOLD THAT PLAINTIFF HAD BEEN ARRAIGNED UNDER THE SUPERSEDED INDICTMENT #**8897/88**.

ii. Plaintiff Was Arraigned-Upon The Second Indictment #8897/88 And-By Pleading NOT GUILTY, Plaintiff Had Denied All Charges Imputed To Him Under The Second Ind. #8897/88 [CPL 200.80]

28. **THE SCHEME OF SUPERSEDED IND. #8897/88 WAS DESCRIBED ON 4/10/89:**

MR. [DEFENSE COUNSEL SALVATORE] **CANONICO**: ARE WE GOING TO HAVE A CHARGE CONFERENCE?

**THE COURT**: YES, WE WILL HAVE IT RIGHT NOW. THIS [8897/88] INDICTMENT CONTAINS **FIVE COUNTS.** UNLESS I'M MISTAKEN, THE **SCHEME OF THE INDICTMENT REFERS TO TWO INCIDENTS.**

**COUNT ONE REFERS TO THE COUNT OF INTENTIONAL MURDER.**

**COUNT TWO** REFERS TO THE CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE, AGAIN REFERRING TO THIS **MURDER.**

**COUNT THREE** REFERS TO A WEAPON IN THE THIRD DEGREE, AGAIN REFERRING TO THAT **MURDER.**

**NOW**, IT WON'T MAKE ANY SENSE IN THE INDICTMENT IF **COUNT FOUR** AND **FIVE** RELATE TO THE SAME COUNT I HAVE JUST RELATED. I'M ASSUMING THAT **COUNT FOUR** HAS TO DO WITH THE **SEPARATE INCIDENT** WHERE THE [SAME] GUN WAS DRAW [AGAINST VICTOR ARIAS] AND NOT USED, AND CRIMINAL POSSESSION OF THREE REFERS TO THE SAME INCIDENT. THAT'S THE WAY I AM GOING TO INSTRUCT THE JURY AS TO THESE COUNTS.

I ALSO TELL THE JURY, SHOULD THEY FIND THE DEFENDANT GUILTY OF **COUNT TWO, THEY'RE NOT TO CONSIDER COUNT THREE.** BY THE SAME TOKEN, IF THEY FOUND HIM GUILTY OF COUNT FOUR, THEY'RE NOT TO CONSIDER **COUNT THREE.** ON THE OTHER HAND, IF THEY FIND HIM NOT GUILTY OF THOSE COUNTS, THEY MAY CONSIDER THE CRIMINAL POSSESSION OF A WEAPON IN THE THIRD DEGREE COUNT. IT THAT CLEAR?

****. **MR. [A.D.A. DAVID] NEIER**: YOUR HONOR, WITH RESPECT TO COUNTS FOUR, FIVE, I'M NOT SURE AS TO THE LAW. HOWEVER, I THOUGH I WOULD BRING IT TO YOUR ATTENTION. I BELIEVE THAT **CRIMINAL POSSESSION OF A WEAPON IS A CONTINUOUS OFFENSE** AND I WONDER IF COUNT FOUR AND FIVE ARE **REFLECTIVE.** I'M NOT SUE OF THE LAW AS TO THAT, AND I WOULD REQUEST AN OPPORTUNITY

**THE COURT: FOUR AND FIVE ARE DUPPLICATIVE OF WHAT?**

MR. NEIER: IN OTHER WORDS, **THE WEAPON COUNT RELATES TO THE SAME GUN.**

**THE COURT**: IF YOU WISH ME NOT TO CHARGE **FOUR AND** FIVE, I WON'T.

**MR. NEIER**: I WOULD REQUEST AN OPPORTUNITY TO LOOK AT THE LAW BACK IN MY OFFICE AND TO GIVE THE COURT MY FINAL WORD. ***

**THE COURT.** AT THIS TIME, YES, BUT UP UNTIL THE TIME THAT I CHARGE I WILL LISTEN TO EITHER SIDE.

THE COURT: ARE THERE ANY EXCEPTIONS, COUNSEL?

MR. CANONICO: NONE BY THE DEFENSE.

THE COURT: ANY REQUEST.

**MR. NEIER: NO, YOUR HONOR.** I WOULD JUST STATE FOR THE RECORD, I DIDN'T HAVE AN OPPORTUNITY, EARLIER WE HAD A BENCH CONFERENCE AND IN VIEW OF THE CASES THAT WERE CITE **THE PEOPLE AGREE TO THE WITHDRAWAL OR DIMISSAL OF FOUR AND FIVE OF THE [8897/88 SUPERSEDED] INDICTMENT,"**

[RE PRINTED FROM EXHIBIT E which is pages **396-398 & 501 OF** THE 4/10-11/1989 TRIAL TRANSCRIPT GENERATED UNDER SUPERSEDED INDICTMENT #8897/88].

29. **The Defendant NYC Probation** Dep't. has generated "**PRE-SENTENCE REPORTT # QS88-612**, under Queens County Indictment #1457/87, making reference to the circumstances under the Defendant Office of the Kings Co. D.A. indicted Plaintiff under Kings Co. Ind. #9954/87:

> **On** 11/9/87, **THE DEFENDANT**, WHO WAS ALLEGEDLY IN POSSESSION OF A **.38 CALIBER REVOLVER LOADED WITH FOUR LIVE ROUNDS**, **THREATENED TO SHOT MR. VICTOR ARIAS** WITH IT IN A TEXACO [GAS] STATION AT 4 GRAND STREET, BROOKLY, NEW YORK,"

[**re-printed from PSR-#QS88-00612** (emphasis and underlines added)]["**THE GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. #9419**"].

30. **A Federal Court has unequivocally Found that Only One Gun was involved in the underlying criminal prosecution [see e.g.** Pg. 34, ¶ 41, Post] **and, therefore, the .38 Cal. Revolver forming the basic for Kings Co. Ind. #9954/87 is neither different nor distinct from the .38 Cal. Revolver** forming the predicate for the allegations alleged in the superseded ind. # 8897/88, and a causal connection between the original and the superseded indictment can be inferred from the Statements documented by the Defendant NYC Probation **Department in Pg. 5 of the 5-Pages PRE-SENTENCE REPORT** Case **#KS89-02441**, stating: "**[t]his** [9954/87] indictment is supersceded by the present indictment, **8897/88**" [**accords Exhibit F, at Pg. 5**] and, during the proceeding under Ind. #8897/88, the Court acknowledged that Plaintiff has pleaded NOT GUILTY:

> "NOW, IN OUR JURISDICTION, WHENEVER A DEFENDANT HAS BEEN INDICTED BY A GRAND JURY FOR A FELONY, ANY FELONY, HE APPEARS BEFORE A JUSTICE OF THIS COURT FOR ARRAINGMENT. IT HAPPENED IN THIS CASE, AND **DEFENDANT PLEADED NOT GUILTY.**
>
> BY PLEADING NOT GUILTY, THE DEFENDANT HAS, IN FACT, **DENIED ALL THE CHARGES ON WHICH HE IS BEING TRIED**, AND HIS PLEA OF NOT GUILTY PUTS INTO ISSUE EVERY MATERIAL ACCUSATION AGAINST HIM STATED IN THE INDICTMENT, AND THE **LAW PLACE UPON THE PROSECUTION** THE **BURDEN OF PROOF**,"

[re-printed from **Pg. 475, lines 2-13 of the 4/10/89 Trial Transcript, accords** EXHIBIT E (underlines/All-caps formats added)].

iii. The Stories of Victor **And** Cesar Arias And PO Silva in 1989

31. FOLLOWING PLAINTIFF'S EXTRADITION TO THE STATE OF NEW YORK, THE ORIGINAL INDICTMENT # 9954/87, WAS SUPERSEDED BY SUPERSEDED INDICTMENT # 8897/88 [SEE **THE SPECIFIC WRONG COMPLAINING OF AND THE GRAVAMENS OF THE FIRST CAUSE OF ACTION, at ¶¶ 5 through 30]**, AND DURING THE TRIAL UNDER SUPERSEDED INDICTMENT # 8897/88, WHICH COMMENCED ON 4/3 AND CONCLUDED ON 4/11/89, **THE OFF-DUTY CORRECTION OFFICER** VICTOR ARIAS, SH. # 9419, TESTIFIED, FOR THE FIRST TIME, AS TO THE CIRCUMSTANCE UNDER WHICH HE WENT TO THE NINE 0 (90TH) PRECINCT AND TURNED IN OVER TO THE NON-TESTIFYING NYPD DESK SERGEANT BENARDO BLAIR, THE UNDERLYING .38 CAL. REVOLVER WHICH WAS VOUCHERED AS A "GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. #9419:

Q: IN A LOUD AND CLEAR VOICE, WOULD YOU PLEASE STATE YOUR FULL NAME?
A: **VICTOR ARIAS.**
Q: HOW OLD ARE YOU, MR. ARIAS?
A: 28 YEARS OLD.
Q: AND ARE YOU WORKING?
A: YES, SIR.
Q: WHO DO YOU WORK FOR?
A: I WORK FOR NEW YORK CITY DEPARTMENT OF CORRECTIONS.
Q: WHAT IS YOUR **SHIELD NUMBER?**
A: **9419.**
Q: **NOW, WHAT HAPPENED AT APPROXIMATELY 7:30 P.M. ON NOVEMBER 9, 1987,** AT THE TEXACO GAS STATION AT FOUR GRAND STREET **IN BROOKLYN?**
A: I WAS THERE HAVING A CONVERSATION WITH MY FRIEND, MY **BROTHER [CESAR ARIAS]** AND MY FATHER **AND** AND THE GUY JOINED THE GROUP. HE COME IN A CAR WITH ANOTHER PERSON **THAT DIDN'T KNOW AT THAT TIME.** WE HAVE A LITTLE ARGUMENT. HE WAS ASKING FOR EXCHANGE FOR A DOLLAR. WHEN WE HAVE AN **ARGUMENT.**
Q: NOW, YOU HAD THIS ARGUMENT. WHAT HAPPENED **NEXT?**
A: HE WENT INSIDE THE OFFICE. **HE MAKE A PHONE CALL, THEN** WHEN HE CAME BACK BACK WE HAD ANOTHER ARGUMENT.
Q: YOU HAVE ANOTHER ARGUMENT?
A: **YES.**
Q: WHAT WAS THAT ARGUMENT ABOUT?

[... **CONTINUED ON THE FOLLOWING PAGE**]

[VICTOR ARIAS'S 4/7/89 TESTIMONY CONTINUED FROM PRECEDED PAGE]

A: ABOUT THE SAME [EXCHANGE FOR A DOLLAR] ARGUMENT THAT WE STARTED, ABOUT TRYING TO HAVE EXCHANGE FOR A DOLLAR, THEN HE TRYING TO PULL **A GUN FROM** HIS WAISTBAND.
Q: DID HE PULL A **GUN**?
A: **YES**.
Q: WHERE DID HE PULL THE **GUN FROM?**
A: FROM HIS WAISTBAND.
Q: WHAT DID HE DO WITH IT?
A: HE PULL IT **BUT MY BROTHER** [CESAR ARIAS] **WAS CLOSER OF HIM.** MY BROTHER [**CESAR ARIAS**] **GRABBED IT AND TOOK IT AWAY** FROM HIS HAND,"
Q: WHAT HAPPENED NEXT?
A: MY BROTHER **GIVE THE GUN TO ME**.
Q: WHAT DID THE DEFENDANT DO?
A: **HE WENT IN A TAXI** [THAT WAS] WAITING FOR HIM.
Q: THERE WAS A TAXI THAT WAS WAITING FORM HIM?
A: YES, **SIR**.
Q: AND WHAT HAPPENED TO THE DEFENDANT AND THE TAXI?
A: **THEY WENT** AWAY.
Q: NOW, AFTER YOUR BROTHER [CESAR ARIAS] GAVE **YOU THE GUN**, WHAT DID YOU DO?
A: **I WENT TO THE NINE O PRECINCT** LOCATED AT UNION STREET AND **I G[A]VE THE GUN TO THE POLICE.**
Q: DO YOU RECALL WHICH **POLICE OFFICER** YOU **GIVE THE GUN TO**?
A: **I GAVE THE GUN TO SERGEANT BLAIR.**
Q: **BLAIR**?
A: **YES.**
Q: **ALL RIGHTS.** WHAT HAPPENED NEXT?
A: AFTER I GAVE THE GUN TO SERGEANT BLAIR, **SERGEANT BLAIR GAVE THE GUN TO OFFICE SILVA?**
Q: WHEN YOU FIRST GAVE THE **GUN** SERGEANT BLAIR, WAS **OFFICER SILVA PRESENT?**
A: YES, SIR.
Q: HOW MUCH TIME PAST BETWEEN THE TIME YOU **GAVE** THE **GUN** TO **SERGEANT BLAIR** AND SERGEANT BLAIR GIVE THE **GUN** TO **OFFICER SILVA?**
A: **ABOUT 40 MINUTES OR AN HOUR.**
Q: WHAT KIND OF GUN WAS IT?
A: **IT WAS A COLT .38, LIKE A TWO INCH BARREL, BLACK COLOR**,"

[RE-PRINTED FROM **Pg. 281, Ls. 10-25; Pg. 282, Ls. 3-17, AND PG. 317, Ls. 6-8** OF THE 4/7/1989 TRIAL TRANSCRIPT GENERATED UNDER SUPERSEDED INDICTMENT #8897/88 (KINGS CO. 9/27/1988), (see e.g. EXHIBIT E affixed herewith ) (EMPHASIS, UNDERLINES, MATERIALS IN BRACKET MARKS AND ALL-CAPS FORMATS ADDED)][HEREINAFTER REFERRED TO AS THE **4/7/1989 STORY OF** VICTOR ARIAS"].

32. DEFENDANT NYPD OFFICER JOHN SILVA, SH. # 2671 ("SILVA" OR "SILVE") TESTIFIED ON **4/7/89** PURSUANT TO THE INSTRUCTION OF THE OFFICE OF THE KINGS CO. D.A. AND WITH THE KNOWLEDGE OF THE DEFENDANT NYPD THAT, FOLLOWING HIS WARRANTLESS ARREST OF PLAINTIFF IN THE EVENING OF **11/9/87**, HE TOOK PLAINTIFF TO HIS NINE 0 (90TH) PRECINCT AND THAT, UPON ENTERING THE PRECINCT, THE DESK SERGEANT (NAMED BENARDO BLAIR) **HANDED A .38 CAL. REVOLVER FOR VOUCHERING, WHICH HE IMMEDIATELY VOUCHERED UNDER NYPD "VOUCHERD D12747: [DIRECT TESTIMONY]:**

> Q: **OFFICER**, AFTER YOU RECEIVED THE GUN FROM SERGEANT BLAIR AND THE ROUNDS FROM THE SERGEANT ***, WHAT **DO YOU DO WITH THEM?**
> A: I VOUCHERED IT.
> Q: WHAT DOS **VOUCHERING MEANS?**
> A: THAT IS TAKING PROPERTY AND KEEPING IT FOR SAFEKEEPING.
> Q: CAN YOU TELL ME **UNDER WHAT NUMBER** [THE GUN] WAS **VOUCHERED?**
> A: CAN I REFRESH MY MEMORY?
> Q: **YOU CAN REFRESH YOUR RECOLLECTION.**
> A: IT WAS VOUCHERED UNDER **D-12747**.,"

[RE-PRINTED FROM PGS. 311-313 OF THE 4/7/1989 TRIAL TRANSCRIPT GENERATED UNDER SUPERSEDED INDICTMENT **#8897/88** (EMPHASIS, UNDERLINES, MATERIALS IN BRACKET MARKS AND ALL-CAPS FORMATS ADDED)].

33. DURING A WADE HEARING CONDUCTED ON 3/31/89 **UNDER** SUPERSEDED INDICTMENT #8897/88, **OFFICER SILVA WERE ASKED AND ANSWERED:**

> Q: NOW, LET ME SEE IF I UNDERSTAND, YOU ARE THE ONE THAT VOUCHER THE GUN?
> VOUCHER THE **GUN**.
> A: **YES.**
> Q: **BUT IT WASN'T TURNED OVER TO YOU?**
> A: THE SERGEANT **GAVE IT TO ME.**
> Q: THAT WAS THE PERSON THAT TURNED IT OVER TO YOU?
> A: **RIGHTS.**
> Q: **IT WASN'T MR. ARIAS?**
> A: THE SERGEANT **GAVE IT TO ME,"**

[RE-PRINTED FROM PG. 25, LINES 5-19 OF THE 3/31/1989 - **WADE HEARING TRANSCRIPT GENERATED UNDER IND. #8897/88** (EMPHASIS, UNDERLINES AND ALL-CAPS FORMATS ADDED)].

34. On April 7, 1989, THE BROTHER OF THE OFF-DUTY CORRECTION OFFICER ARIAS VICTOR, SH. # 9419, WERE SUMMONED TO TESTIFIED AND, WHEN THE STATE COURT ASKED TO IDENTIFY HIMSELF, MR. CESAR ARIAS IDENTIFIED HIMSELF AND SPELLED HIS NAME LOUD AND CLEAR:

THE WITNESS: CESAR ARIAS, C E S A R A R I A S.
THE COURT: GOOD ATTERNOON SIR. GO AHEAD.
DIRECT EXAMINATION BY MR. [ADA DAVI] NEIER:
Q: MR. ARIAS, HOW OLD ARE YOU?
A: THIRTY-NINE.
Q: IN NOVEMBER OF 1987--ARE YOU EMPLOYED NOW?
A: SURE, YES.
Q: WHAT DO YOU DO NOW?
A: I WORK AS A MECHANIC IN A GAS STATION.
Q: NOW, DIRECTING YOUR ATTENTION TO NOVEMBER OF 1987, WERE YOU WORKING AT THAT TIME?
A: YES, SIR.
Q: AND WHERE WERE YOU WORKING AT THAT TIME?
A: I HAVE A GA STATION. TEXACO GAS STATION, FOURTH AND GRAND STREET STATION, BROOKLYN.
Q: TEXACO GAS STATION?
A: YES, SIR.
Q: NOW, DIRECTING YOUR ATTENTION TO NOVEMBER 9, 1987, AT APPROXIMATELY 7:20, 7:30 P.M., WERE YOU WORKING AT THAT TIME?
A: YES, SIR.
Q: AND CAN YOU TELLME WHO WAS PRESENT IN THE GAS STATION AT THAT TIME?
A: MY BROTHER [THE OFF-DUTY CORRECTION OFFICER VICTOR ARIAS, SH. #9419], I AND ONE FRIEND.
Q: NOW, WHAT HAPPENED AT THAT TIME?
A: WELL, AT THAT TIME, MY BROTHER [VICTOR ARIAS] WAS IN THE GAS STATION AND GIOVANNI CAME IN TO DROP HIS CAR TO BE REPAIRED.
Q: WHO?
A: GIOVANNI. HE COME DOWN TO DROP HIS CAR OFF TO BE REPAIRS AND THEN HE HAVE LUGGAGE OR SOMETHING IN THE CAR. HE TAKE THEM OFF AND TOLD ME TO CALL THE TAXI. HE GAVE ME A DOLLAR TO HAVE CHANGE. I WENT ACROSS THE STREET CHANGE THE DOLLAR AND I BE BACK. WHEN I BE BACK, I CALLED THE TAXI.
Q: WHAT HAPPENED NEXT?
A: THEN WHEN I CALLED THE TAXI--WHEN THE TAXI COME IN, HE HA[S] SOME WORD WITH MY BROTHER. THEN HE PULLED A GUN AND POINT[ED] TO MY BROTHER, AND I TAKE THE GUN OUT OF HIS HANDS.
Q: WHAT DID YOU DO WITH THE GUN?
A: I GIVE TO MY BROTHER,"

[RE-PRINTED FROM PAGES 329-333 OF THE 4/7/89 TRIAL TRANSCRIPTS GENERATED...

under Superseded Indictment # 8897/88 (emphasis, underlines, materials in bracket marks and All-caps formats added)] [Exhibit E ].

35. NOTWITHSTANDING THE BEDROCK PRINCIPLE THAT A PROSECUTOR MUST NOT OFFER INCONSISTENT THEORY AND FACT REGARDING THE SAME CRIME AND, ON 3/31/1989, UNDER SUPERSEDED INDICTMENT #8897/88, THE DEFENDANT OFFICE OF THE KINGS CO. D.A. OFFER THE FOLLOWING INCONSITENT THEORY OF LIABILITY REGARDING THE SAME ALLEGED CRIME HERETOFORE DESCRIBED:

> MR. [A.D.A. DAVID] NEIER: WHAT HAPPENED, THE DEFENDANT HAD A DISPUTE WITH THE OWNER OF A GARAGE [AND] DURING THAT DISPUTE[,] THERE WAS A STRUGGLE OVER THE GUN AND THE OWNER TOOK IT WAY.
> HE [CESAR ARIAS, A/K/A, CAESAR ARIAS] CALL HIS BROTHER [VICTOR ARIAS] HIS BROTHER IS A CORRECTION OFFICER.
> HE [VICTOR ARIAS] TOOK THAT GUN TO THE PRECINCT. WHILE THE BROTHER [VICTOR ARIAS] WAS IN THE PRECINCT, THE DEFENDANT RETURNED WITH TWO OTHER INDIVIDUALS AND DEMANDED THE GUN BACK. AT THAT POINT THE GARAGE OWNER SAY MY BROTHER [VICTOR ARIAS] HAS THE GUN. LET ME CALLED HIM.
> MR. [DEFENSE COUNSEL SALVATORE] CANONICO: I WOULD ASK YOUR HONOR, WHEN IT CAME TO TAKE INTO CONSIDERATION, THAT'S ALSO AN UNCHARGED CRIME.
>
> MR. NEIER: IT'S A CHARGED CRIME IN THE INDICTMENT.
> THE COURT. THE ALTERCATION, THE ASSAULT—
> MR. NEIER: IT'S NOT AN ASSAULT, IT'S CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE.
> MR. CANONICO: MAYBE WE CAN REDACT CERTAIN PARTS.
> THE COURT: WE CAN CLEAN IT UP AT THE RIGHT TIME.
> (WHEREUPON, THE COURT CONDUCTED OTHER COURT BUSINESS AND THEN RETURNED TO THE INSTANT CASE.) [2]
> (WHEREUPON, JURY SELECTION COMMENCED AND CONTINUED UNTIL CLOSE OF THE BUSINESS DAY.),"

[RE-PRINTED FROM PAGES 93 & 94 OF A SANDOVAL HEARING CONDUCTED ON 3/31/89 (EMPHASIS, UNDERLINES, MATERIALS IN BRACKET MARKS AND ALL-CAPS FORMATS ADDED)]. [2]

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[2] CF. DAVIS V. WALKELEE, 156 U.S. 680, at 689-690, 15 S.CT. 555; THOMPSON V. CALDERON, 120 F.3d 1045, at 1057-1059 (9TH CIR. 1997) AND VICKBURSG & M.AR. CO. V. OBRIEN, 119 U.S. 99, AT 105, 7 S.Ct. 172. PLAINTIFF NEITHER POSSESSED NOR WAS CHARGED WITH A SECOND GUN, AND VICTOR ARIAS'S BROTHER, CESAR ARIAS, NEVER ACTUALLY TESTIFY THAT THERE WAS A SECOND GUN INVOLVED OR THAT HE EVER SAW A SECOND GUN.

36. **ACCORDING** TO THE PROBABLE CAUSE STORIES ON **1988** FOR THE WARRANTLESS ARREST OF PLAINTIFF IN THE EVENING OF 11/9/87, **NEITHER** ARRESTING OFFICER JOHN SILVA, SH. #2671, WHO ACTUALLY APPRHENDED PLAINTIFF, NOR OFFICER HARDY OBSERVED PLAINTIFF WITH A GUN:

> Q: WHEN YOU **ARRESTED HIM**, DID YOU PUT HIM DOWN AT ALL WHEN YOU GRABBED HIM?
> A: WHEN I GRABBED HIM, WE BOTH WENT DOWN TO THE GROUND AND **I CUFFED HIM.**
> Q: DID YOU FIND ANYTHING ON HIM?
> A: **NO.**
> Q: **NOW, THIS JACKET THAT WAS RETRIEVED** BY ANOTHER OFFICE, **WAS A GUN FOUND IN THE JACKET.**
> A: **NO.**
> Q: WHAT WAS FOUND IN THE JACKET, DO YOU KNOW?
> A: SOME UNITED STATES CURRENCY AND SOME WHITE POWDER,"

[RE PRINTED PGS. 20, LINES 11-25 OF A WADE HEARING CONDUCTED ON 4/3/1989 UNDER SUPERSEDED INDICTMENT #8897/88 (EMPHASIS, UNDERLINES AND ALL CAPS FORMATS ADDED)].[2]

37. **NYPD OFFICER ANN MARIE HARDY, SH. #31587,** UPON ACKNOWLEDGING THAT DEFENDANT OFFICER SILVA ACTUALLY APPREHENDED PLAINTIFF:

> Q: **NOW, WHO APPREHENDED HIM?**
> A: POLICE OFFICER SILVA,"

[ID., AT **PAGE 33, LINES 18-19** (EMPHASIS AND ALL CAPS FORMATS ADDED)], SHE ALSO TESTIFIED THAT THERE WERE NOT GUN FOUND IN PLAINTIFF'S PERSON OR IN HIS PROPERTY:

> **Q: THERE WAS NOT GUN ON HIM; IS THAT CORREDCT?**
> A: **YES, SIR.**
> Q: THERE WAS NOT GUN IN THE JACKET OR THE SWEATER WHEN THEY WERE RETRIEVED?
> A: **NOR, SIR.**
> Q: BY THE WAY, DID YOU HAVE ANY CONVERSATION WITH THE DEFENDANT?
> A: **NO, SIR,"**

[**RE PRINTED FROM ID., AT** PG. 46, LINES 11-23 (EMPHASIS, UNDERLINES AND ALL CAPS FORMATS ADDED)].[2]

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[2] **NEITHER OF THE ARRESTING OFFICER** FOUND FOUND A **WEAPON OR REVOLVER** IN PLAINTIFF'S PERSON OR IN PLAINTIFF'S PROPERTY OR IN THE SCENE OF THE ARREST, AND NYPD OFFICER SILVA, SH. #2671 MERELY VOUCHERED THE "GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR" WHICH HE RECEIVED FROM THE DESK SGT. UPON RETURNING TO THE PCT.

38. DURING THE UNDERLYING APRIL 3-11, 1989 STATE JURY TRIAL UNDER SUPERSEDED INDICTMENT # 8897/88, THE STATE TRIAL COURT JUDGE INSTRUCTED THE JURY, WITH RESPECT TO THE CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE COUNTS THAT:

> IF YOU FIND THE PEOPLE HAVE PROVED TO YOUR SATISFACTION BEYOND A REASONABLE DOUBT EACH OF THOSE **THREE ELEMENTS** AS I HAVE JUST EXPLAINED THEM: **FIRST**, THAT ON OR ABOUT **NOVEMBER 9, 1987**, IN THE COUNTY OF KINGS, THE DEFENDANT POSSESSED A CERTAIN OBJECT, WHICH WAS INTRODUCED INTO EVIDENCE BY THE PEOPLE AS **PEOPLE EXHIBIT; TWO, THAT WHAT THE DEFENDANT** POSSESSED WAS, IN FACT, A LOADED FIRARM: **THREE**, THAT THE DEFENDANT KNOWINGLY POSSESSED A LOADED FIREARM AND: **FOUR**, THAT THE DEFENDANT POSSESSED A LOADED FIREARM WITH INTENT TO USE IT UNLAWFULLY AGAINST ANOTHER, YOU MAY FIND DEFENDANT GUILTY OF CRIMINAL POSSESSION OF A WEAPON IN HE SECOND DEGREE,"

[RE PRINTED FROM **PG. 492, LINES 6-22** OF THE 4/10-11-1989 TRIAL TRANSCRIPT GENERATED UNDER SUPERSEDED INDICTMENT # 8897/88 (EMPHASIS, UNDERLINES AND ALL-CAPS FORMATS ADDED)]["**CPW-2nd**"], WHICH IS IS A CLASS C FELONY UNDER N.Y.S. PENAL LAW § 265.03 (1987)].

39. WITH RESPECT TO THE COUNT OF MURDER IN THE SECOND DEGREE BY SHOOTING, **THE STATE COURT JUDGE INSTRUCTED THE JURY THAT:**

> **IF YOU FIND THE PEOPLE HAVE PROVED TO YOU** SATISFACTION BEYOND A REASONABLE DOUBT EACH OF THOSE THREE ELEMENTS AS I I HAVE JUST EXPLAINED THEM: **FIRST, THAT** ON OR ABOUT **NOVEMER 9, 1989**, IN THE COUNTY OF KINGS, THE DEFENDANT SHOT THE DECEASED, PEDRO RODRIGUEZ, **WITH A HANDGUN**; TWO, THAT DEFENDANT DID SO WITH INTENT TO CAUSE THE DEATH OF PEDRO RODRIGUEZ, AND **THREE**, THAT THE DEFENDANT'S ACT **CAUSED THE DEATH OF PEDRO RODRIGUEZ**, YOU MAY FIND THE DEFENDANT GUILTY OF THE CRIME OF **MURDER IN THE SECOND DEGREE**,"

[RE-PRINTED FROM **PG. 486, LINES 2-13** OF THE 4/10-11/1989 TRIAL TRANSCRIPT GENERATED UNDER KINGS CO. SUPERSEDED INDICTMENT #8897/88 (EMPHASIS, UNDERLINES AND ALL-CAPS FORMATS ADDED)], WHICH IS A CLASS-A-1 FELONY UNDER N.Y.S. PENAL LAW § 125.25(1)(1987). [2]

[2] In U.S. V. LEICHTNAM, 948 F.3d 370 (7TH CIR. 1991), THE COURT ERRONEOUSLY INSTRUCTED THE JURY THAT "A CONVICTION COULD REST ON PROOF THAT LEICHTNAM HAD USED OR CARRIED "A" **FIREARM**, WHETHER OR NOT IT WAS THE MOSSBERG SPECIFIED IN THE INDICTMENT AND MADE IT POSSIBLE FOR THE TRIAL JURY TO CONVICT LEICHTNAM ON CHARGES WHICH THE GRAND JURY **NEVER MADE**." **id.**

40. ACCORDING TO INFORMATION ENTERED BY THE DEFENDANT N.Y.C. PROBATION DEPARTMENT UNDER "PRE-SENTENCE REPORT CASE #KS89-02441, KINGS CO. CT. CONTROL #10890722Q, THE DEFENDANT NYPD KNEW THAT A BULLET FIRED FROM AN SECOND GUN DELIVERED/FIRED THE BULLET WHICH ACTUALLY CAUSED THE DEATH OF THE UNDERLYING VICTIM PEDRO RODRIGUEZ ON OR ABOUT 11/9/87 OR, MORE SPECIFICALLY, THE FATAL BULLET WAS FIRED FROM:

> A .38 SPECIAL CALIBER COLT REVOLVER WITH 6 CHAMBERS, SERIAL #206659 AND AMMUNITION WERE 4.3 SPECIAL CALIBER CARTRIDGES. ACCORDING TO AN AUTOPSY REPORT PERFORMED ON THE DECEASED, PEDRO RODRIGUEZ, ON 11/10/87 AT THE KINGS COUNTY MORTUARY BY DOCTOR [JUAQUIN] GUTIERREZ, ASSOCIATE MEDICAL EXAMINER, THE CAUSE OF DEATH WAS INDICATED AS 2 GUNSHOT WOUNDS TO THE CHEST, HEART, LUNGS, AORTA, AND TRACHEA WITH HEMORRHAGE. ACCORDING TO THE MEDICAL CERTIFICATE OF DEATH, THE DECEASED WHO WAS TAKEN TO WYCKOFF HOSPITAL AND HAD BEEN FOUND DEAD AT THE SCENE, WAS PRONOUNCED DEAD ON 11/9/87 AT 4:35 A.M., AND THE DECEASED WAS 20 YEARS OLD AND THE CAUSE OF DEATH WAS AS ABOVE-MENTIONED,"

[id., AT PG. 4 OF 5, ACCORDS, DE7, AT PG. 61 OF 80 ENTERED ON FLSD DOCKET: 09-25-14 ("PSR#KS89-02441")(EMPHASIS, UNDERLINES, MATERIALS IN BRACKET MARKS AND ALL-CAPS FORMATS ADDED"]{HEREINAFTER REFERRED TO AS "THE SECOND GUN"] [see Exhibit F].

41. SUBSEQUENTLY, ON JUNE 26, 1989, A FEDERAL COURT FOUNDS THAT "PETITIONER WAS NOT CHARGED WITH POSSESSION OF THE SECOND WEAPON:"

> BEFORE TRIAL [UNDER SUPERSEDED INDICTMENT # 8897/88] THE PETITIONER INFORMED THE [STATE] COURT THAT HE WOULD TESTIFY AT TRIAL. AS REQUIRED BY NEW YORK LAW, THE [STATE] COURT HELD A SANDOVAL HEARING TO DETERMINE WHETHER THE PROSECUTION WOULD CROSS-EXAMINE THE PETITIONER ON ANY UNCHARGED CRIMINAL ACTS. PETITIONER WAS NOT CHARGED WITH POSSESSION OF THE SECOND WEAPON. THE PROSECUTOR DID NOT INDICATE THAT HE WOULD QUESTION PETITIONER ON THE WEAPON DISPOSAL,"

[RE-PRINTED FROM PG. 18 of a 33-pages Slip. Op. Issued by the USDC, EDNY].

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[2] THE INFORMATION ENTERED IN THE "PSR #KS89-02441" IS ADMISSIBLE UNDER THE HOLDING IN WILLIAMS V. PEOPLE OF THE STATE OF NEW YORK, 337 U.S. 241, AT 249-250, AND SAID INFORMATION BELIES THE DA'S CLAIM.

42. Plaintiff remained in the physical custody of the New York State Department of Corrections ("DOCS") between 12/26/1989 and 8/6/2015 and, while in the physical custody of the DOCS, Plaintiff was denied adequate medical care service; consequently, Plaintiff was allowed to develop End-Stage Renal Disease ("ESRD") and became wholly dependent upon either dialysis or kidney transplant for survival.

43. Notwithstanding the **UNAMBIGUOUS** languages of the underlying Terms and Conditions [Exhibit A] for waive of Extradition, which mandated that, in the case of a conviction and expiration of any MINIMALLY IMPOSED Sentence the Plaintiff be released from the custody of the STATE OF NEW YORK and BE RETURNED his Domicile in the STATE OF FLORIDA, the Defendants NEW YORK STATE and its agents and agencies refused to comply with the underlying TERMS and CONDITIONS and, in recklessly disregard of the underlying TERMS AND CONDITIONS for [Exhibit A] for waiver of Extradition, on August 6, 2015, the Defendants NEW YORK STATE's agency DOCS released Plaintiff to the Supervisions of the NEW YORK STATE DIVISION OF PAROLE ("NYS DOP").

44. **U.S.C. §§ 1981-1986 provides**, in the context of **ENFORCEMENT OF CONTRACT, that:**

> "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contract, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind, and to no other,"

[id. 42 U.S.C. § 1981 (emphasis added)].

45. **Plaintiff is a member of a racial minotiry, and the Defendants have intentionally violated the** Plaintiff's rights to make and enforce

the underlying [Exhibit A] Contract.

46. On March 23, 1871, **President** ULYSES S. GRANT ("Grant") sent an urgent message to congress calling for national legislation that could combat the alarming increase in **RACIAL UNREST AND VIOLENCE** in the South and, immediately, Congress reacted swiftly to this request, proposing a bill just five days later, which resulted in the enforcement act of 1871 (17 Stat. 13) also known as the **Civil Rights Act of 1871**, and the primary objective of the bill was to provide a means of individuals and state enforcement, in **FEDERAL or STATE COURTS**, the provisions of the Fourteenth Amendment, and, although the propose bill crated heated debate lasting several weeks, it was eventually passed on **April 20, 1871 and, as codified**, the CiviL Rights Act of 1871, as amended, proscribes that:

> **Every person,** who **under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory or the District of Columbia,** subject, or causes to subjected, any citizen of the United States or other person person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the **Constitution and law, shall be liable to the party injured in an action at law, suit in equity, or other property proceeding for redress,"**

[accords, 42 U.S.C. § 1983 **("§1983")**(emphasis added)].

47. **Had Plaintiff been tried, convicted and sentenced to a Minimum oaf Twenty-Five Years, he would** have been discharged/released from the physical custody of the City/State of New York and would have been returned to his Domicile in the State of Florida as of 2013 had the Defendants intended to live-up to the Promises they had made on 9/1/1988 **to** induce Plaintiff to conditionally waive extradition to the STATE OF NEW YORK on 9/4/1988 [see e.g. **EXH. A**].

48. Similarly, **had the Defendants Tried but failed to Convict** the plaintiff of the alleged Acts or Omissions, said to constituted the Crimes for Which Plaintiff conditionally waived Extradition involving the using of the underlying Serial # **288659LW Colt .38 Cal. Revolver** or "GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. # 9419" and its possession on or about 11/9/87, Plaintiff would have been discharged from the physical custody of the Defendants City/State of New York and would have been returned to his Domiciles in the State of Florida, from where Plaintiff was extradited, as of the conclusion of the underlying State Trial April, 1989 [see e.g. **Exhibit A**], which is incorporated by Reference herein, had the Defendants intended to live up to the promises the defendants had made on 9/1/1988 in order to induce plaintiff to waive extradition to the State of New York. [2]

49. **Under Article 11 of the** UNIVERSAL DECLARATION OF HUMAN RIGHTS:

> "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
> "No one shall be held guilty of any penal offece on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed.
> "Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed,"

**[accords, U.N. UNIVERSAL DECLRATION OF HUMAN RIGHTS, Article 11]:**

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[2] **N.Y.** Penal Law § 70.40, is not applicable to Plaintiff [see e.g. **Exhibit A**], provides that a prisoner serving an INDETERMINATE SENTENCE becomes eligible for Parole at the **EXPIRATION OF THE MINIMOM Sentence** [see id., **§70.40(1)(a)(i)**]. When paroled, the prisoner-turned-parolee is RELEASED to the custody of the New York State Division of Parole ("DOP") to serve the remainder of his sentence "**in accordance with and subject to the provision of executive law**" [id. § **70.40(1)(a)**]. **Plaintiff's Presence in the STATE OF NEW YORK is, however, controlled by the underlying [Exhibit A] Terms and Conditions**, regardless of Conviction.

**B. FIRST COUNT FOR REDRESS UNDER 42 U.S.C. §§ 1981-1986**

**50.** Plaintiff **repeats and** realleges each and every statements contained in the preceded ¶¶ 1 through 49 heretofore asserted with the same force and effect as if fully set forth herein at length;

**51.** Congress enacted § 1983 and its predecessor, § 2 of the CiviL Rights Act of 1866, **14 Stat. 27, to provide an independent avenue for protection of federal constitutional rights, and the** remedy was considered necessary because, as reflects in the acts and omissions of the STATE/MUNICIPAL Officials named herein, "State Courts were being used, as they are being used in the case sub judice, to harass and injure individuals, either because the state courts were **powerless to stop the underlying deprivations or are in LEAGUE with those who are bent upon abrogation of the underlying Federally Protected Rights**, and it is plaintiff's **plaintiff's contentions that, had the Defendants named herein and each of them intended to LIVE UP to the promises their had made lon 9/1/1988, as documented in the underlying TERMS AND CONDITIONS [Exhibit A] for waiver of Extradition**, the Defendants would have discharged Plaintiff from the custody of the DOCS/DOP and would have returned Plaintiff to his domicile in the State of Florida, either because the Defendants failed to tried and convict Plaintiff of the Acts and Omissions for which Plaintiff had conditionally waived extradition or **because, had plaintiff been tried, convicted and sentenced to an INDETERMINATE SENTENCE with a minimum of twenty-five years, the MINIMUM Sentence expired in 2013 the later** and, either ways, the presence of

**of Plaintiff in the CORPORATE CITY/STATE OF NEW YORK,** without had been given him an opportunity to return to the State of New York from which he was extradited on 9/4/1988, **per se,** violated State and Federal Extradition Laws and Plaintiff's Substantive Rights to Travel, for which **Count for Redress is hereby created under the Civil Rights Act of 1871;**

52. **A firearm is used in relation to an offense if it facilited or played a role in the crime charged;** otherwise, under New York Decisional Law, the mere possession of a **loaded but IMOPERABLE Serial #288659LW Colt .38 Two Inch** Barrel Cal. Revolver or "GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. # **9419" [see Exhibit B]** is no sufficient to support a violation of New York Statutory or Decisional laws, within the purview, true intent and meanings of Paeople v. Ross, 461 N.E.2d 1270, **61 N.Y.2d 316 (N.Y. Ct. 19840(PERCURIAM)][cf. U.S. v. Leichtnam, 948 F.3d 3706 (7th Cir. 1991)]** and, thus, in the absence of evidence that the underlying Serial # 288659LW Colt .38 Two Inch Barrel Colt. Cal. Revolver imputed to Plaintiff on 11/9/87 as a "**GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. #9419"** on 11/9/87 was operable and capable of discharge live ammunition, the Presence of Plaintiff in the CITY/STATE OF NEW YORK violated **STATE AND FEDERAL AEXTRADITION LAWS and offends the First through 14 Amendments and runs afoul of The INTERNATIONAL CONVENTION ON HUMAN RIGHTS,** for which a causes of action is hereby created under the Civil Rights Acts of 1871, **as well as,** § 4 **of the Civil Rights Act of 1875, 18 STAT.** 336;

53. The State Courts within the STATE OF NEW YORK are being used to harass and injure and oppress individuals in violation of the Supremacy Clause which mandates that state must provides hospitable forums for federal claims and the vindications of federal rights;

**54. The Defendants knew the difference between a Serial Number 288669LW** Two Inch Barrel Cal. Revolver with which Plaintiff was charged [see **Exhibit B6**] as a "GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. # 9419" **on 11/9/87 [id.]**, which culminated in Kings County Indictment # 9954/87 under which Plaintiff was extradited, and the second Gun identified as "**a .38 special caliber Colt revolver with 6 chambers**, serial #206659, pg. 4 of the 4 of the underlying **Five-Page Pre-sentence Report Case #K89-02441** [**Exhibit F**] **as the actual .38 cal. revolver used in relation to** the underlying offense ["hereinafter referred to as "The Second Weapon], and an Article III Court has unquivocally found that Plaintiff was never charged or imputed ownership possession of the underlying Second .38 cal. revolver said to had been used in the commission of the underlying offense [¶40, 40, ante] **and, therefore, the presence of Plaintiff in the Custody/Supervision of the Defendants City/State of New York and its agents, employees and agencies-against plaintiff's will**, violated Applicable State and Extradition Laws, Offends the **First through Fourteenth Amendments** and runes afoul of Commercial/International Laws, for which a causes of action is hereby crated under the Civil Rights Acts of 1871 et seq.;

**55. It is clearly improbable that the underlying loaded but IMOPERABLE Serial # 288659LW Colt .38 Cal. revolver or weapon was connected with the offense** for which Plaintiff was induced to conditionally waive extradition, as documented in Exhibit A, thereby violating STATE AND FEDERAL EXTRADITION LAWS and Plaintiff's SUBSTANTIVE RIGHTS TO TRAVEL;

56. The Rights of Travel is a natural and inherent right of all people, indispensable to the enjoyment of movement and of the enjoyment of the rights of life, liberty and the pursuit of happiness and, the acts and omissions of the defendants, as heretofore described, violated Plaintiff's **natural and inherent rights to freely travel from one state to another and from the United States to another foreign country, and vice versa,** in further violation of the natural and inherent rights to EXPATRIATION.

57. **WHEREFORE,** be it ORDERED and DECREED by an Article III Court or by a Article III Court Panel of the United States District Court, for the Southern district of New York, that any declaration, judgment, decrees , instruction, order, or decision of any officers, agents or agencies of the City or State of New York which denies, restricts, impairs, or questions the **Plaintiff's** Right of EXPATRIATION to the State from where he was extradited on 9/4/1988, is hereby declared inconsistent with the Fundamental Principles of STATE AND FEDERAL EXTRADITION LAW; **and be it further ORDERED and DECREED** that whenever it shall be made known to any Article III Court or Magistrate within the United States District Court, for the Southern District of New York, that Plaintiff has been unjustly deprived of his liberty by or under the authority of any Employees, Agents, or Agencies of the City or State of New York, it shall be the duty of the Article III Court or Magistrate Judge forwith to Orders, Directs or Demands of the employees, Agents, and Agencies of the City or State of New York the reasons for such imprisonment and, if it appears to be **wrongful and in violation of the rights, privileges or immunities guaranteed**

**by the Constitution or Laws of the United States, the Article III Court or the presiding U.S. Magistrate** shall forthwith demand the release of Plaintiff , and if the release so demanded is unreasonably delayed or refused, it shall be the duty of the Article III Court or U.S. Magistrate to use such means, not amounting to acts of war, as s/he may think necessary and proper to obtain or effectuate such release , and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the Article III Court or U.S. Magistrate to the SECRETARY OF STATE OF THE STATE OF FLORIDA AND OF THE STATE OF NEW YORK; And be it further ORDERED such other and further relief and provisional remedies, including reasonable **attorney's fees, compensatory and punitive damages, in a reasonable amount not inconsistent with the Twenty-Eighth Years Plaintiff** has been held, against his will, by employees, agents, and agencies of the City and State of New York following the Defendants' INTERSTATE TRANSPORTATION of Plaintiff across-estate line to the City/STATE OF NEW YORK on 9/4/1988;

C: SECOND COUNT FOR REDRESS UNDER ADMIRALTY/MARITIME/COMMERCE LAWS

58. Plaintiff repeats and realleges each and every statements contained in the preceded ¶¶ 1 through heretofore asserted with the same force and effect as if fully set forth herein at length.

59. The Defendants CITY/STATE OF NEW YORK and its employees, agents and agencies and public servant had sough the arrest of the underlying Infant JUAN CANDELARIA, NYSID#5507184J, under the the additional theory that the underlying **SERIAL # 288659LW Colt. .38 Cal. Revolver imputed to the underlying Infant JUAN CANDELARIA as a "GUN RECOVERED BY CORRECTION OFFICER ARIAS VICTOR, SH. # 9419"** [Exhibit B] on 11/9/87 was Operable and Capable of discharging Live ammunition and, consequently, the underlying infant JUAN CANDELARIA, was physically arrested in his Domicile in Miami Florida and was transported across Stateline to the STATE OF NEW YORK and, under 27 C.F.R. § 72.11, the charge imputed to plaintiff-**POSSESSION OF A DEADLY WEAPON," is deemed a** "COMMERCIAL CRIME" [id.], and it its Plaintiff's **contention that the underlying INFANT JUAN CANDELARIA, is deemed a "VESSEL" under the criteria for Identifying his Admiralty/Maritime Claim, and "[t]he admiralty and maritime Jurisdiction of the Unaited States shall extend to and include all case of damages or injury, to person or property, caused by a VESSEL on NAVIGABLE WATER,** notwithstanding that damage or injury be done or consumated on land" [45 U.S.C. App. § 740];

60. It is Plaintiff's contention that when CAPITAL letters are used anywhere in a NAME, as in **JUAN CANDELARIA, in PEOPLE OF THE STATE OF NEW YORK v. JUAN CANDELARIA, Indictment #9954/87, this always refers to LEGAL ENTITY/FICTION, COMPANY OR CORPORATION,** without

exception and, under 28 U.S.C. § 3002(15)(A), the "INITED STATES" is defined as a "CORPORATION" which encompasses **"the territories and District of Columbia [13 Stat. 223, 306, Ch. 173, § 182, June 30, 1864]** and its **government formed** under the Act of 1877 and, under the Treaty of 1213, Britain is owned by the Vatican, and the Pope claims to own the entire planet through the LAWS OF CONQUEST AND DISCOVERY [see e.g. The Inter Cetara Bill of May 4, 1493, **and Papal Bulls of 1495**];

61. In other words, the Common English name of Highest Legal Personality under roman law and Common Law is the "**SEDES SACRORUM**" **[latin for "Santa Seder" or "Holy See")**, and the "**Holy See" is coextensive with the "Vaticans" which in turn is a "COMERCIAL CORPORATION"** under which the Roman Cult Pope and its Curia of Bishops claim SOVEREIGNTY **over the whole Earth [see e.g.** Elements Ecclesiastical Law Vol. 1, 53-54 "**The Holy See and Civil Governments may be annulled by the Pope**"].

62. In the underlying Terms and Condiŝions [Exhibit A] for waiver of Extradition, the underlying INFANT JUAN CANDELARIA invoked **The Uniform Commercial Code ("UCC")** which, in summary parts, provides that:

> "**[u]nless displaced by the particular provision of this Act, the principles of law and equity, including the Law Merchant and Law relative to capacity to contract, principal and agents, estoppel, fraud, misrepresentation, duress, coercion, mistake, Bankruptcy, or other validating or invalidating cause shall supplement its provisions,**"

**[id., UCC, at 1-103** (emphasis added)[ and that:

> "A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by other prty does not thereby prejudice the right reserved...,"

**[id., UCC, at 1-308].**

**63.** When a ship arrives at a foreign dock, its merchandise is taken off the ship and unto the **land.** Of course, there has to be a way to transfer custody of the merchandise, so a **"certificate"** is issued to **account for each product**, and the **"Certificate"** would state on its face the "berth date" of the products into the custody of the nation taking ownership. THIS BRINGS TO MIND THE "BIRTH CERTIFICATE" ("STRAW MAN"):

**64.** When we are born and have had a birth certificate application filed, our **"vessel" (flesh and blood body) is considered** lost at sea **and,** for that reason, a trust is created in our name (**"The Stawman"**), and we are he BENEFIC**IARY of that trust.** As beneficiary, we do not get to choose what happens with the **trust** or the **estate within the trust.** The executor or trustee decides for us what benefits we get from the trust. **This trust is actually a private international trust**, and there is no need for its existence to be divulged to the beneficiary. This trust is actually also never **"expressed" as it is 100% constructive [hereinafter after referred to as** "THE STRAWMAN")] **which is subject to the government's rule.** That is, Commerce is based o n **agreement, conatract,** and the **government has** an implied agreement with the **STRAWMAN (government's creation) and the** STRAWMAN **is subject to government rule,** **until we, the real flesh and blood man and woman, step into the government's "process" and become the**"surety" for the fictional **STRAWMAN, in which stage** reality and fiction are reversed, and we then become liable for the debts, liabilities and obligation of the **STRAWMAN, relinquishing our real (protected) character as we stand up for the fictional world and ourselves in the real world (with all our "shields" in place against fictional government).**

65 . A Birth Certificate or "Certificate of Living" is a **DEATH WARRANT** or **"DEATH CEARTIFICATE,** and it declares or establishes that the "New Born" flesh and blood natural "**human**" is to be deemed as a "DECEASED" "**PERSON**" and "**ESTATE**" and, thus, the "**real man**" survives as an "**incompetent**" ward of the **STATE,** "procured" and "warehoused" for future distribution," while operating the **ESTATE,** ENS **LEGIS,** in NAME for benefit and gain of those who created **ENS LEGIS-ESTATE,** and the "Real Man" is bound "fiduciary" and "bounds" all activities in **commerce conducted in NAME OF** ENS LEGIS ESTATE-VESSEL."

66. The Birth Certificate issued under **Roman Law** represents the modern equivalent to the Settlement certificates of the 17th century and signifies the holder as a **pauper and effectively a** ROMAN SLAVE [**see Canons 2050 & 2053**]:

> "The **slave baby** contract is then created by honoring the ancient tradition of either having the ink impression of the feet of the **baby** onto the living birth record, or a drop of its blood as a well as tricking the parents to signing the baby away through the deceitful legal meanings on the live birth record. This live birth record as a **promissory** note is converted into a **slave bond sold to the private reserve bank of the estate and then converted into a 2nd and separate** Cestui Que (Vie) **Trust per child owned by the bank.** Upon the promissory note reaching maturity and the bank being unable to "**seize**" the **slave child, a maritime lien is lawfully issued to "salvage"** the lost property and itself monetized as currency issued in **series against the Cestui Que (vie) Trust,"**

**[re-printed from** Roman **Canon** Law **3.3., Cannons 2050 and 2053, at 2050** (emphasis and underlines added)][**"Rights Suspension and Corruption Article 10-Cestui Que Vie Trust**"]. Each Cestui Que Vie Trust created since 1933 represents one of the 3 Crowns representing 3 claims of property of the **ROMAN CULT,** being **REAL PROPERTY, PERSONAL PROPERTY** and **ECCLESIASTICAL PROPERTY** [see e.g. **id., at** Canons **2036-2057**].

67. Under the Treaty of 1213, Britain is owned by the Vatican, under the following circumstances.: Pope innocent III placed the Kingdom of England under an interdict for five years between 1208 and 1213 after King John (kings of England, who reigned from 6 April, 1199, until his death) refused to accept the Pope's appointee Stephen Longton as Archbishop of Canterbury and, consequently, in November, 1209, King John was excommunicated and, in February 1213, Pope Innocent III threatened stronger measures unless King John submitted. The papal terms for submission were accepted by King John in the presence of Papal legate Pandulph in May 1213, through which John offered to surrender the Kingdom of England to God and the Saints peter and Paul for a feudal service of 1, 000 marks annually, 700 for England and 300 for Ireland ("The Treaty of 1213").

King John's Act of Vassalage To Pope (May 15, 1213)

68. On May 15, 1213, surrounded by Bishops, Barons, Knights and Various Nobles of the Realm, King John took an oath of fealty to the Pope on his knees before Pendulph, and the occasions was to surrender of the Crown to the Pope and, in that points, King John then made his submission, in the House oaf the Knights Templair.

69. The Charter of Submission from King John of England, in 1213, specifically provides that "John," by grace of God King of England, Lord of Ireland, Duke of Normandy:

> By this charter attested by our golden seal we wish it to be known to you all that ...we **offer and freely yield to God and to SS Peter and Paul**...and to the **Holy Roman Church** our mother, and to our lord Pope Innocent III and his Catholic successors, **the whole kingdom of Ireland with all their rights and appurtenences for the remission of our sins and the sins of our whole family....** And now, receiving back these Kingdom from God and the Roman Church, and holding them as a **feudatory vassal...** we have pledged and sworn our fealty hencefort to our lord and aforesaid, Pope Innocent III...and we bind in **perpetuity our successors and logitimate their heirs** that without question they **must similarly render fealty and acknowledge homage to the Supreme Pontiff Holding Office at the Time... in lieu of all service and payment which we should render for them [the fiefs], the roman church** is to receive anually ...one thousand marks sterling....,"

[re-printed from Charter of Submission from the Kings of Endland, John, 1213 **(emphasis added)]**.

70. **Under 28 USC § 3002(15),** the United States is a Corporation and it existed before the Revolutionary ward, and Queens Elizabeth controls and has, recently amended the United States Social Security [Order of 1997, effective as of September 1st, 1997][cf. Treat of Peace (1738) 8 U.S. Statutes at Large] and, under **27 C.F.R. § 72.11, "Crimes"** are deemed "Comercial" [id.]

71. **Section 16 of the Federal Reserve Act of 1913, as codified in 12** U.S.C. § 411, **was charged in 1933 to mandate that:**

> The [Federal Reserve Notes] **shall be redeemed in lawful money on demand at the Treasury Department of the United States,** in the City of Washington, district of Columbia, or at any Federal **Reserve Bank,**"

[**12 U.S.C. §411** (emphasis added)], "**Gold**"/"**Silver**" **are** "LAWFUL MONEY."

72. The " Cestui Que View Act of 1966 (1666 Chapter 11 18 and 19 Ch. 2), An Act for Redress of **Inconveniencies** by want of Proof of the Deceases of Persons beyond the Seas or Absenting themselves, upon whose Lives Estate does depend, provides that:

> "If such person or persons for whose life or lives such Estates have been or shall be granted as as aforesaid shall remains beyond the Seas or elsewhere absent themselves in the Realm by Space of seven years together and no sufficient and evident proof be made of the lives of such person or persons respectively in any Action commenced for recovery of such Tenements by the Lessors or Reversioners in every such case the person or persons upon whose life or lives such estate depended shall be accounted as naturally dead. And, in every action brought for the recovery of the said Tenements by the Lessors or Reversioners their Heirs or Assignees, the Judges before whom **such action shall be brought** shall direct **the jury to give their Verdict as if the person so remaining beyond the Seas or otherwise Absenting himself were dead,"**

[**re-printed from** Cestui Que View Act of 1666"].

73. Under Biblical Law, the Parents of the infant consent to be Trustee y virtue of signing the baby's BIRTH CERTIFICATE (BIRTH CERTIFICATES are only for "Slaves" prior to women becoming "equal" to men) and, usually, **the Mother of the Infant** is the ONLY one required to sign, inter alia, because she is deemed to be the direct **blood more so than the Father. She has the higher "Claim" to the Living** Baby.

**74.** Once the Negotiable (BIRTH CERTIFICATE) instrument is transferred to the Department of Commerce, they "**pledge**" the infant's "Labour for the Infant's Lifetime" as its "Secured" asset, and proceeds to "assure" (different from insure) the **INFANT'S Labour** against the Government (State)**'s DEBT**, and it subsequently gets an "underwriter" to insurer the Infant's **Labor.**

75. Under the Shipowner's Liability Convention (54 STAT. 1693 (1939)], a Shipwners' may be liable for maintenance and cure of sailors injured on ship and for injuries occurring on law. Courts have construed accidents occurring during leave as being the responsibility of shipowner because sailors need land visits in order to endure the long hours of water transportation [see e.g. The Jones Act of 1920, as codified in 46 U.S.C.A. § 688 et seq. and the 1920 Death on High Seas Acat, as codified in 46 App. U.S.C.A. §§ 761 et seq.][A "marine league is one-twentieth of a degree of a latitude, or three miles, and the 1920 Deatth on High Seas Act allows recovery by the beneficiaries of a sailor's estate when the sailor dies by negligence, default, or wrongful act on the high seas "beyond a marine league from the shore of any State [or territory or dependency]."

76. The Longshoremen's and Harbor Worker's compensation Act, as codified in 33 U.S.C.A. § 901 et seq. (1927) also sets up a federal system to compensate injured maritime workers who do not sail, and Title 46 of the U.S. Code, which sets a schedule for sailor's earnings and the conditions of their contracts, also lists the qualifications for sailor employment [id., at §§ 701 et seq.], the hours and conditions of the employment [id., at § 8104 et seq.] and living conditions that must be provides [id., at §§ 11101 et se.]

77. Federal laws also address the problems that best ships and the life-or-death decisions made by carriers. The carriage of goods by Sea [see 46 U.S.C.A. §§ 1300-1215 (1936)]] regulates the rights, responsibilities, liabilities, and immunities regarding the relationship between shippers and carriers of goods, and the Salvage Act, as codified

in 46 U.S.C.A. §§ 727-731(**1912)], provides** for compensation to persons who help save a ship or cargo from danger or help recover a ship or cargo from actual loss; however, to qualify for salvage renumeration, a person must not be acting in service of the ship or in **performance of** a **contract, and the help given must have contributed at least in part to a** wholly or partially successful salvage of the ship or goods.

**78.** The case law of the United States is rich in the areas of **sailor's rights** respecting the unseaworthiness of **vessels,** compensation for vessels suppliers and services, and the **liabilities arising from collisions, towage, pilotage and grounding. The Maritime Lien Act, as codified in 46 U.S.C.A. §§ 3134-31436 (1920)** gives a lien to any person, who, upon the order of the shipowner, furnishes, repairs, supplies, towage, use of **dry dock or marine railway,** or other necessaries to any vessel, without allegation or proof that credit was given [see **46 U.S.C.A. §§ 31301-31330**(1920)].

**79.** The Ship Mortgage Act, as codified in 46 U.S.C.A. §§ 31301-31330 (1920) regulated the Mortgages on ships registered in the United States, and also provides for enforcement of the Maritime Lien obtained through the **Maritime Lien Act.**

**80.** In case of collisions or other damage to a vessel, an **in rem proceeding is often used to recover damages.** An "**in rem action**" is a lawsuit brought against an offending thing (in admiralty, usually the ship), whereas an **"in personam action"** is a suit brought against a person. Rule C of the Supplemental Rules for Certain Admiralty and Maritime claims (1985) provides necessary details for the seizure of an offending owner's vessel or property if a defendant vessel owner does not live in the state in which a suit is brought.

81. The practical effect of Supplemental rules B to E is to make it easier for a plaintiff to bring actions against OUT-OF-STATE and Foreign vessel owners and to provide for the attachment and garnishment of the offender vessel.

82. An important consideration in any lawsuit is venue and, under Article III, section 2, of the U.S. Constitution, Federal Courts have the power to try "all Cases of admiralty and maritime Jurisdiction" [Art. III, §2] and, under the "Saving-to-The Suitors" clause of 28 U.S.C.A. §§ 1333(1), State Courts also have current jurisdiction, when the State Court's Common Law is competent to give a remedy and, in such case, the State Court must apply the Federal law of Admiralty to the admiralty claims.

83. When no applicable federal statute exists, the governing law of Maritime case will be the uniform laws as expounded by the U.S. Supreme Court. Maritime case law-not the general common law-will govern a CONTRACT DISPUTE only if the subject matter of the CONTRACT pertained to water commerce.

84. The Ports and Waterways Safety Act of 1972, as codified in 33 U.S.C.A. §§ 1221 et seq.], which was designed to reduce the loss of vessels and cargo, protects marine environment and prevent damage to structures on or adjacent to navigable waters, and ensure compliance with vessel operation and safety standards, and risk of loss is sometimes decided according to a BILL OF LANDING," which is the document confirming a carrier's receipt of goods form the owner (consignor),a verifies the voyage contract, and shows rightful ownership of the goods [Lekas & Drives, Inc. v. Goulandris, 306 F.2d 426 (2d Cir. 1962)].

85. The Law [Art. I, § 8, Cl. 3 of the U.S. Constitution] unquestionably grant Congress the power to regulate the **INTERSTATE EXTRADITION and the Navigable waters of the United States and any other activities that substantially affect INTERSTATE COMMERCE** to the extent that it provides that "congress shall have Power.... [to] regulate Commerce ... among the **several states," such as The Extradition of the INFANT JUAN CANDELARIA between the State of Florida and the State of New York** and, the Acts and Omissions of the Defendants, as heretofore described, violated the **INTERSTATE RENDITION CLAUSE of Article IV, § 2, and Article I, Section 10 ("the Interstate compact] of the** United States Constitition which proscribed that "**NO STATE SHALL, WITHOUT CONSENT OF CONGRESS... enter into any Agreement or Compact with another State," for which Second Cause** of Action is hereby created under 42 U.S.C. §§ 1981-1986;

86. As herein provides "an interstate compact is an agreement between two or more state and, under Articvle I, Section 10 of the United States Constitution, which provides that "NO STATE SHALL ENTER INTO AN AGREEMENT OR COMPACT WITH ANOTHER STATE," the Defendant City/State of New York Could not have legally entered into an AGREEMENT with the Defendant STATE OF FLORIDA to transport Plaintiff across-state line without following-up the mandate of Art. IV, § 2, Cl. 2 of the U.S. CONSTITUTION and without violating Article I, Section 10 and the Supremacy Clause, for which Second Cause of action for redress is hereby created under the Civil Rights Acts of 1871 et seq.

87. WHEREFORE, **because it is strange indeed that the very infant, JUAN CANDELARIA,** who had so recently, through perils by sea and land, escaped with only his life holding on by the strong Grips of the Lion Paw hoping to return to his domicile in his State of Florida, should be continuously held, against his will, in the City/State of New York without an opportunity to return to the domicile from where he was extradited over **ONE QUARTER OF A CENTURY ago on 9/4/1988** without any valid expectation of conviction under Kings Co. Indictment 9954/87 ina violation of **STATE AND FEDERAL EXTRADITION LAWS,** Plaintiff demands reasonable Compensatory damages, in an reasonable amount not to exceed one Million Dollars ($1,000,000.00) for each years, commencing on **9/4/1988, the Defendants, their agents, Agents, and employees have been held the Plaintiff** in the Custody/supervision of the City/State of New York without any valid expectation over obtaining a conviction under Kings county Indictment # 9954/87, to compensate Plaintiff for the harms, in the form of losing his Kidney, short life expectancy and pain and suffering, twenty-five millions dollars ($25,000,000.00) in punitive damages to detect the defendants, their agents, agencies and employees from engaging in similar acts and omissions in the future, and compelling the defendants, each of them, and those acting in concert with them, their agents, agencies, and employees from to show cause why **Kings Co. Indictment # 9954/87 should not be dismissed with prejudice and the record pertaining thereof expunged and the fingerprints/mugshot** returned to the **infant JUAN CANDELARIAa and why the defendants should not comply with the mandates of Exhibits** and granting such other and further reliefs and provisional remedies as

granting such other and further reliefs and provisional remedies as as this Honorable Article III Court deem just and proper in the absence of any available remedies in law or equity.

Respectfully Submitted,

Date: 3/3, 2017
Queens County, NY

Juan Ramon, d.b.a., JUAN CANDELARIA,
NYSID#5507184J, 3129 99th Street, First Floor, East Elmhurst, New York 11369

VERIFICATION

I, Juan Ramon, declares, under penalty of perjury, that I am a Flesh and Blood man crated in the inmage of G-d, and I have individual knowledge of the matters contained in the foregoing Complaint under the Civil Rights Acts of 1871 et seq, and I have read the contents of the same and, to the best of my knowledge, ability and recollection, the same are true and correct, with the exception of improperly spelled words and phrases and those matters stated to be alleged upon information and belief and, as to the latter, I believe them to be true and correct.

Respectfully Executed,

Executed on: 3/3, 2017
Queens County, N.Y.

Juan Ramon

STATE OF FLORIDA-COUNTY OF DADE-MIAMI DIVISION

In re: WAIVER OF EXTRADITION TO THE DEMANDING STATE OF NEW YORK OF JUAN CANDELARIA, NYSID# 5507884J (FBI RECORD # 277674EA1) UPON THE EXPRESS TERMS AND CONDITIONS THAT HE (MR. CANDELARIA) WOULD BE TAKEN FROM AND RETURNED TO THIS STATE OF FLORIDA (AT THE EXPENSE OF THE DEMANDING STATE OF NEW YORK), TO BE SO RETURNED UNDER THE UNIFORM CRIMINAL EXTRADITION ACT OF 1936-THE INTERSTATE AGREEMENT ON DETAINERS-AND-CONTRACT, GUARANTEE-AND-COMPACT CLAUSES OF THE CONSTITUTION OF THE UNITED STATES AS HEREUNDER (ARTICLES 6-9) CONFERRED, STIPULATED AND AGREED AS OF 9/1/1988

COPY

FILED SEP 1 1988

WHEREAS, it is hereby stipulated and mutually agreed by and between the undersigned (Representative of this State of Florida, the Accused Mr. Juan Candelaria himself and the Agent for the Demanding State of New York) that enforcement of INTERSTATE Laws dealing with Extradition of Fugitive (or Not) is premised on the notion that the Requesting (NEW YORK) State must live up to whatever promises it make in order to obtain extradition because preservation of the institution of extradition requires the continuing cooperation of the surrendering (FLORIDA) State and, in the case sub judice, this State of Florida is permitting this Agreement and, in fact, this Agreement (see e.g. the TRANSCRIPT OF EXTRADITION Hearing and Waiver of Extradition)- is between the person being extradited and the Demanding State of New York because "THE AGENT FOR THE STATE OF NEW YORK failed to produce a forensic report demonstrating the operability of the "REVOLVER" imputed to Mr. Candelaria, this Agreement ensued and the basis have been stated on the EXTRADITION CONFERENCE and "INTERSTATE EXTRADITION is intended to be summary and mandatory executive proceeding, and no one shall be held guilty of any penalty offence on account of any ACT or omission which did not constitute a penal offense or "CRIME" under INTERSTATE, National or INTENTIONAL LAW, at the time when it was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed [PEOPLE V. ROSS, 61 N.Y.2d 316 (N.Y. CT. App. 1984)(PERCURIAM)] and person are Sometimes "WRONGFULLY EXTRADITED" on less than probable cause [IN RE STRUSS, 197 U.S. 324, 332-333 (1905)] and nothing has been pleaded or proved to show that the "REVOLVER" imputed to Mr. Candelaria is a deadly weapon capable of producing the death of the underlying [WARRANT # E88200021] victim [cf. 18 U.S.C. Section 4001(a)(1971)].

WHEREAS, Mr. Juan Candelaria, N.Y.S.I.D.: 0550784J, FBI Record # 277674EA1, a S'faradi tabo, with permanent domiciles in the City of Miami Beach, in this State of Florida, had gone on a TEMPORARY VISIT to the City of New York, Borough of Brooklyn, County of Kings, State of New York, with intention of Returning and Continuing his residence in this State of Florida, was, on his return, prevented from Boarding a Cab to the Kennedy Airport but, instead, Mr. Candelaria was arrested, confined and restrained of his liberty in the evening of NOVEMBER 9, 1987 and, over his objection, he was continuously held in the Custody of the New York City Department of Correction ("NYCD") by authorities in the State of New York until he was otherwise discharged therefrom and returned to his State of Florida on February 12, 1988.

WHEREAS, Mr. Candelaria acquired, by virtue of his residence in the City of Miami Beach, a right of Asylum in this State of Florida and to be freed from continuous detention after he had been returned to this State and it was recently determined, during the underlying Extradition Conference, that the charges now laid against him, as more fully set forth hereinafter, are not warranted, and the Existence of Mr. Candelaria's residence in this State of Florida is proof that MEMBER STATES, including the State of New York, foresaw the risk of extraditing a Citizen on less [18 U.S.C. Sectin 4001(1971) and U.S. Const. Amend. with GESTEIN V. PUGH, 420 U.S. 103 (1975); WINSTON V. LEE, 470 U.S. 753, at 765-766, n. 10 (1985)] than probable cause that the "DEADLY" weapon imputed to Mr. Candelaria was capable of producing the death of another human being the underlying victim, and (a) disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind and the advent of a world which human being could peacefully cohabit and (b) even though the Asylum State could not inquire upon the facts or the law of the matter to be tried in the Court of the Demanding State of New York, the Interstate Agreement on Detainer and the Uniform Criminal Extradition Act make it clear that there nevertheless must be a reasonable possibility that the crime imputed to Mr. Candelaria in the State of New Yok "MAY BE SUCH" [Drew v. Thaw, 235 U.S. 432, at 439-440 (1914)].

WHEREAS, the Governor of the State of New York had requested and the Governor of this State of Florida denied, the RENDITION of Juan